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TRANSCRIPT OF RECORD

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UNITED STATES
COURT OF APPEALS
FIFTH CIRCUIT.

No. 16,626

HERMAN ROBERSON,

Appellant,

versus

UNITED STATES OF AMERICA,

Appellee.

Appeal from the United States District Court for the Middle District of Alabama.

(ORIGINAL RECORD RECEIVED JUN. 18/57.)

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CAPTION.

BE IT REMEMBERED that a regular term of the United States District Court, in and for the Northern Division of the Middle District of Alabama, the Honorable Frank M. Johnson, Jr., United States District Judge for the Middle District of Alabama, presiding, was held at Montgomery, Alabama, said term beginning on the 25th day of March, 1957, and there came on to be heard and determined, among other causes pending on the docket, while Court was regularly in session, the following cause:

Criminal Case No. 10,747—Northern Division.

UNITED STATES OF AMERICA,

versus

HERMAN ROBERSON.

Appearances:

Hartwell Davis, United States Attorney, and Robert E. Varner, Assistant United States Attorney, Montgomery, Alabama, For Appellee.

William J. Fuller, Jr., 240 Washington Avenue, Montgomery, Alabama, and Charles Reynolds, Lanett, Alabama, For Appellant.

Filed in open Court in the presence of the foreman and 15 other members of the Grand Jury this 25 day of (Illegible) 1950 at 3:35 o'clock P.M. (Illegible).

United States District Court for the Middle District of Alabama, Northern Division.

No. ..... (18 U. S. C. 2312).

United States of America,
v.
Herman Roberson and Bill Rhodes.

Count One.

The Grand Jury charges:

On or about March 4, 1953, in the Middle District of Alabama, Herman Roberson received a stolen motor vehicle (to wit, a 1948 Chevrolet automobile) which was moving as interstate commerce, and he then knew said motor vehicle to have been stolen.

Count Two.

On or about March 8, 1953, in the Middle District of Alabama, Herman Roberson received a stolen motor vehicle (to wit, a 1948 Chevrolet automobile) which said motor vehicle was moving as interstate commerce, and he then knew said motor vehicle to have been stolen.

Count Three.

On or about the Middle of March, 1953, in the Middle District of Alabama, Herman Roberson re-

ceived a stolen motor vehicle (to wit, a 1950 Oldsmobile automobile) which was moving as interstate commerce, and he then knew said motor vehicle to have been stolen.

Count Four.

On or about June 9, 1953, in the Middle District of Alabama, Herman Roberson and Bill Rhodes received a stolen motor vehicle (to wit, a 1951 Cadillac automobile) which said motor vehicle was moving as interstate commerce, and they then knew said motor vehicle to have been stolen.

Count Five.

On or about June 11, 1953, in the Middle District of Alabama, Herman Roberson and Bill Rhodes sold a stolen motor vehicle (to wit, a 1951 Cadillac automobile) which said motor vehicle was moving as interstate commerce, and they then knew said motor vehicle to have been stolen.

A True Bill.

RUSH STALLINGER,
Foreman of the Grand Jury.

ROBERT E. VARNEY,
Assistant United States Attorney.

STATEMENT OF DOCKET ENTRIES.

United States District Court for the Middle District of Alabama, Northern Division.

United States of America,
v. No. 10,747.
Herman Roberson,

1. Indictment or information for violation of Section 2312, Title 18, U. S. C. (Motor Vehicle Theft Act) Filed February 20, 1955.

2. Arraignment March 9, 1955.

3. Plea to indictment or information Plea of not guilty, March 9, 1955.

4. Motion to withdraw plea of guilty denied.

5. Trial by jury, or by Court if jury waived Trial by Jury, February 6, 1956.

6. Verdict or finding of guilt Guilty as to Counts 1, 3, 4 & 5 of the Indictment. February 7, 1956.

7. Judgment—(with terms of sentence) or order Sentenced to the custody of the Attorney General or his authorized representative for a period of Four Years Entered February 7, 1956.

Defendant released on bail pending hearing on motion for new trial.

8. Notice of appeal filed March 8, 1956.

Dated March 10, 1956.

Attest:

R. C. DOBSON,
Clerk.

STATEMENT OF DOCKET ENTRIES.

United States District Court for the Middle District of Alabama, Northern Division.

United States of America,
v. No. 10,747.
Herman Roberson.

1. Mandate from Circuit Court of Appeal, Fifth Circuit Reversing and remanding case to the United States District Court Middle District of Alabama, Filed January 22, 1957.

2. Arraignment.

3. Plea to indictment or information.

4. Motion to withdraw plea of guilty denied.

5. Trial by jury, or by Court if jury waived March 30, 1957, then recessed during illness of the Judge and completed April 8, 1957.

6. Verdict or finding of guilt Jury and Verdict of Guilty, April 8, 1957.

7. Judgment—(with terms of sentence) or order Committed to the custody of the Attorney General for a period of Four (4) Years, Entered April 9, 1957.

8. Notice of appeal filed April 19, 1957.

Dated April 19, 1957.

Attest:

R. C. DOBSON,
(R. C. Dobson),
Clerk.

AMENDED MOTION FOR BILL OF PARTICULARS.

(Title Omitted.)

To the Honorable Frank M. Johnson, Jr., Judge of said Court:

Now comes the Defendant, Herman Roberson, and pursuant to the provisions of rule 7, section (f), Federal Rules of Criminal Procedure, amends his motion for a bill of particulars in this cause, such rule providing as follows:

"(f) Bill of Particulars. The Court for cause may direct the filing of a bill of particulars. A motion for a bill of particulars may be made only within ten days after arraignment or at such other time before or after arraignment as may be prescribed by rule or order. A bill of particulars may be amended at any time subject to such conditions as justice requires."

In connection with this motion, this Defendant represents unto the Court that his original motion was filed in this cause on February 6, 1956 and denied by the Court, presumably on the ground that it was not made in time. In amending this motion, Defendant calls the Court's attention to the fact that this case has just recently been returned to this Court by the United States Court of Appeals for the Fifth Circuit, and to this Defendant's knowledge, no date has yet been fixed for the second trial of this case, and Defendant has not yet been further arraigned. As grounds for this motion, Defendant respectfully assigns the following:

1. For that each count of the indictment is not sufficiently definite for the Defendant to properly prepare his defense, in that the automobiles in question are merely described by make and year and not otherwise.

2. For that each count of the indictment is so vague and indefinite as not to permit an orderly trial of this case, as was apparent from the confusion that resulted on the first trial, in so far as identification of the vehicles involved was concerned.

3. For that each count of the indictment is so vague, indefinite and uncertain that it would not be sufficient to prevent more than one trial of this Defendant on numerous indictments worded in exactly the same manner.

4. For that at the time that this offense is alleged to have occurred, it would have been common knowledge that there would have been thousands of auto-

mobiles that could have been described in the same general terms as, are contained in the indictment in this case and in each count thereof.

The premises considered, Defendant respectfully prays that the Court will set this motion down for hearing, and upon such hearing, will enter an order directing the United States Attorney for this District to file a bill of particulars, setting out the pertinent details of the charges against this Defendant.

WM. J. FULLER, JR.,
Attorney for Defendant, Herman Roberson.

I, Wm. J. Fuller, Jr., attorney for the Defendant, Herman Roberson, hereby certify that I have on this date handed a copy of the foregoing amended motion to Robt. E. Varney, Asst. United States Attorney for the Middle District of Alabama, and have also called the motion to the attention of the Court, this 1st day of March, 1957.

WM. J. FULLER, JR.,
Attorney for Defendant, Herman Roberson.

Filed Mar. 1, 1957.

MOTION TO STRIKE DEFENDANT'S AMENDED MOTION FOR BILL OF PARTICULARS.

(Title Omitted.)

Comes now the United States by its attorneys, Harwell Davis, United States Attorney and Robert E.

Varner, Assistant United States Attorney, and moves to strike defendant's amended motion for Bill of Particulars filed on March 1, 1957, and as grounds therefor, assigns the following:

1. Defendant was arraigned in the instant cause on March 9, 1955; he filed a motion for Bill of Particulars on February 6, 1956, the date of his first trial; and his amended motion for Bill of Particulars was filed March 1, 1957. Neither the original motion for Bill of Particulars nor the amendment thereto was made within the time provided by law.

2. The defendant in his motion merely asks for a Bill of Particulars, not specifying what matters he seeks to elicit but simply asking for whatever broad information he may get in reply thereto, and it is, therefore, too vague and broad to entitle defendant to any information.

3. Defendant's attorney, Wm. J. Fuller, Jr., was given such information as defendant now seeks in a conference with the United States Attorney or his assistant prior to the original trial of this cause on February 6, 1956. This case was thereafter appealed to the United States Court of Appeals for the Fifth Circuit and a transcript of the evidence of the original trial was prepared and defendant obtained a copy thereof. Said transcript furnishes defendant with much more than the information to which he would be entitled on a Bill of Particulars. The information apparently sought by the defendant is, therefore, not necessary to enable him to prepare for trial and to meet the charges made against him, since he has all such necessary information at his disposal.

4. The information sought by defendant on Bill of Particulars is within the defendant's own knowledge and he has no right to a Bill of Particulars thereon.

5. The sole purpose in filing the Amendment to the Motion for a Bill of Particulars is to harass the Government's prosecution of this case.

6. Defendant's amendment to his motion for a Bill of Particulars fails to state a cause for which the Court may direct the filing of a Bill of Particulars.

7. Both the motion for Bill of Particulars and the amendment thereto are void as Rule 7(f) of the Federal Rules of Criminal Procedure provides that such a motion "may be made only within 10 days after arraignment, or at such other time before or after arraignment as may be prescribed by rule or order." (Rule 7(f)). Ten days after arraignment having elapsed on March 19, 1955, and no rule or order of the Court appearing to the contrary, the motion may not be made at this time.

Respectfully submitted,

HARTWELL DAVIS,
United States Attorney,

ROBERT E. VARNER,
(Robert E. Varner),
Assistant United States Attorney.

MOTION DOCKET.

Filed Mar. 6, 1957.

In the United States District Court for the Middle District of Alabama, Northern Division.

March 5, 1957.

The Court:
The next case is the United States versus Herman Roberson. This case is here upon Defendant's amended motion for a Bill of Particulars, made pursuant to Rule 7-F, of Criminal Procedure.

I guess I will hear you first, Mr. Fuller.

Mr. Varner:
We made a motion to strike that motion.

The Court:
I will hear you back and forth for a reasonable time.

Mr. Fuller:
If it please the Court, as this motion is headed, it is an amended motion and it is an effort on our part to require the Government to specify what we think should be specified, in order for the Attorney to know what he is charged with, in sufficient detail to properly try the case.

Your Honor will recall there was considerable confusion in the trial of the case in the first instance, that arose out of which automobiles we were talking about. The District Attorney's office made repeated objections to the questions that I undertook to ask

about different automobiles, finally they conceded that they had furnished me the motor numbers. That was after half a day had been spent in the case, some of my witnesses were discredited because it was made to appear to the jury that they did not know what automobiles were involved in the case.

I would assume that the motion was denied on the original hearing because it was filed too late.

The Court:

That was not the reason I denied it. It was denied because the District Attorney represented to me that he had furnished you the motor numbers and you acknowledged for the record, that he had furnished them. That was the basis for denying the motion.

Mr. Fuller:

The admission on the part of the District Attorney that the motor numbers had been furnished, Your Honor, came after almost a half day in arguing as to whether or not the man who went to Atlanta, actually looked at one of the cars involved.

When the motion was originally presented, there, as I recall was no statement by the District Attorney that the motor numbers had been furnished, that did not come until over into the record of this trial. And it was after innumerable objections.

In this trial we have now, 21 or more days before this case comes up for trial. As it now stands, the entire indictment could refer to 10,000 automobiles.

The Court:

All right. Let's take it up Count by Count. The first Count charges Herman Roberson with receiving a

1948 Chevrolet automobile, that is what it refers to, now just exactly what do you want, Mr. Fuller, as far as that 1948 Chevrolet automobile is concerned?

Mr. Fuller:

Your Honor, I think they should state the motor number of the automobile, the color of the automobile, the place that the automobile was stolen, if it was stolen, the name of the owner of the automobile, at the time it was stolen, if it was stolen. The name of the person that stole the automobile, if it was stolen, the date the automobile was stolen, if it was stolen. I believe I enumerated the theft, if there was a theft, and some facts to indicate that it was moving in interstate commerce, what place it was transported from and to what place it was transported to. And until that is done it is my contention and I think I have adequate authority to back it up, that the Government has done no more than if this was a murder case to say that defendant in this case killed a man, born in 1892. They don't tell you who the man was, why he killed him or anything about it.

The Court:

All right. Let me ask you this, as far as Count 1 is concerned: Have they furnished you with the motor number of the 1948 Chevrolet automobile?

A. Yes, prior to the original trial.

Q. Well, do you still have it?

A. I do.

The Court:

All right. Now, is the motor number he furnished you previously, as far as the 1948 Chevrolet automobile was still the same motor number that you intend to rely on in this case?

Mr. Davis:
Yes, sir.

The Court:
All right. Let's go to Count 3. Count 2 has been dismissed, has it not?

A. Yes, sir.

The Court:
Now, Count 3, relates to a 1950 Oldsmobile automobile, have you furnished him the motor number of that automobile?

Mr. Davis:
Yes, sir.

The Court:
Do you still have that?

Mr. Fuller:
Yes, sir.

The Court:
All right. Count 4, refers to a 1951 Cadillac automobile, have you furnished him the number of that automobile?

Mr. Davis:
Yes, sir.

The Court:
Is that still the same motor number?

Mr. Davis:
Yes, sir.

The Court:
Do you still have that motor number?

Mr. Fuller:
I do.

The Court:
Now, Count 5, does that refer to the same automobile or the same one?

Mr. Davis:
The same automobile.

The Court:
Counts 4 and 5 relates to the same automobile?

Mr. Davis:
Yes, sir.

The Court:
All right. I am going to over-rule and deny your motion on the ground that the Government is not required to further particularize; other than to give you the year, and make and the motor number. I understand that there can't be any other automobile in the United States with the same make and the same motor number. So, your motion is over-ruled and denied. I might call it to your attention that the Fifth Circuit commented in their review of the case, that the denial of it before wasn't error.

Mr. Fuller:
I believe the basis of it, as I understood it, was that the motion was not made in adequate time.

The Court:

Judge Rives, as I remember the decision, commented on it without having looked to see, whether it was made in time, the record reflected that the motor numbers had been furnished you, and the record now reflects that in this case, so I am not going to require the Government to further particularize.

Mr. Fuller:

I would like to except to the Court's ruling.

The Court:

All right. Now, before you make this discussion and these arguments, and these acknowledgments, for the record—

Mr. Fuller:

I believe a ruling on a motion of this type is subject to appeal on whether or not the ruling of the Court would be correct. I frankly thought the Court would grant the motion and before giving notice of appeal I would like to check a little further on that.

The Court:

You take whatever action you desire, that is up to you. This case will be, as I have announced, for trial. Is there anything further?

Mr. Fuller:

Your Honor, will you then permit me to, in the event we do decide to appeal on the basis of the Court's ruling to give notice of that appeal at a later date prior to the trial?

The Court:

I won't permit anything that the rules do not permit. You might consult your rules.

Court will be adjourned.

I, Ethel M. Schneider, Court Reporter for the Middle District of Alabama, District Court, do hereby certify the foregoing is a true transcript of notes made by me in said cause, this date.

This the 5th day of March, 1957.

(S.) ETHEL M. SCHNEIDER,
(Ethel M. Schneider),
Official Court Reporter, U. S. District Court, Montgomery, Alabama.

ORDER.

(Title Omitted.)

This cause, coming on to be heard, was submitted to the Court on amended motion of the defendant for a bill of particulars pursuant to Rule 7(f), Federal Rules of Criminal Procedure, and upon the motion of the Government to strike defendant's amended motion for a bill of particulars. It appearing to the Court that the Government having furnished and the defendant's counsel having acknowledged receipt of the motor numbers of the automobiles referred to in each count of the indictment, and it appearing, further, that there can be no question as to the identity

of the automobiles involved or the offenses charged, the Government should not be required to further particularize. It also appearing to the Court that the defendant having previously been tried before this Court for the same offenses involving the same automobiles and the transcript of said cause being now on file in the Clerk's office of this Court, the information now sought is readily available to the defendant.

It is Ordered, Adjudged and Decreed by the Court that the amended motion of the defendant for a bill of particulars be and the same is hereby overruled and denied.

The Government's motion to strike defendant's motion on the ground that the same was not made within the time provided by law requires no ruling by the Court, the Court having denied movant upon the merits of said motion.

Done, this the 6th day of March, 1957.

FRANK M. JOHNSON, JR.,
United States District Judge.

Filed Mar. 6, 1957.

Attest:
A True Copy.
Certified to Mar. 6, 1957.

QUESTIONS TO JURORS IN HERMAN ROBERSON CASE.

Filed Mar. 30, 1957.

1. Has any juror read or heard anything about the case that would prejudice your verdict?

2. Do any of you have any ill feelings or resentment towards used car dealers, in general?

3. Have any of you ever been involved in any dispute or argument with any used car dealer?

4. Is there any juror who is of the opinion that the evidence of an Federal Bureau of Investigation Agent is entitled to any more weight than that of any other credible witness?

5. Does any one of you feel that the testimony of the defendant when given in this case should not be believed?

6. Will any single juror be prejudiced by other verdicts that have been returned to this Court?

7. Is there any one of you who is not willing to try this case solely on the evidence that is admitted by the Court in this case?

8. Have any of you ever been sued by any used car dealer, or have you ever been threatened with a suit by a used car dealer? Have any of you ever had an automobile or truck repossessed by a used car dealer?

9. Is there any one of you who is not willing to presume that the defendant is innocent throughout the trial of this case?

10. Is there any one of you who is not willing to accord this defendant a fair trial?

11. Have any of you ever had an automobile stolen from you?

12. Does any one of you have any prejudice or hard feelings towards the defendant, Herman Roberson?

13. Does any one of you feel that the Government expects you to convict, regardless of the evidence?

14. Does any one of you feel that an indictment is any evidence against a defendant?

15. Is there any one of you that would make up his mind that the defendant should be convicted before the evidence is completed and the jury retires to deliberate?

A. The Court charges the jury that if you believe the evidence in this case, you cannot find the defendant guilty.

B. The Court charges the jury that if you believe the evidence in this case, you cannot find the defendant guilty under Count One of the indictment.

D. The Court charges the jury that if you believe the evidence in this case, you cannot find the defendant guilty under Count Three of the indictment.

E. The Court charges the jury that if you believe the evidence in this case, you cannot find the defendant guilty under Count four of the indictment.

F. The Court charges the jury that if you believe the evidence in this case, you cannot find the defendant guilty under Count Five of the Indictment.

G. The Court charges the jury that if after considering all of the evidence in this case, your minds are left in such a state of uncertainty that you cannot say beyond a reasonable doubt and to a moral certainty that the defendant is guilty of any of the offenses with which he is charged, then this is a doubt which would entitle the defendant to an acquittal, and in such event, you should find the defendant not guilty. You will not, by reason of the number of charges against the defendant, consider this as any evidence of his guilt of any of such charges. In fact, you cannot consider the returning of an indictment against the defendant, regardless of the number of counts contained therein, as any evidence of the guilt of the defendant.

H. The Court charges the jury that if after considering all of the evidence in this case, that your minds, or the mind of any single juror is left in such a state of uncertainty that you cannot say beyond a reasonable doubt that the defendant is guilty of any offense with which he is charged, then you cannot convict the defendant.

I. The Court charges the jury that the burden of proof in this case rests upon the Government and that the defendant is presumed to be innocent and at

no time does the burden of proof shift from the Government to the defendant.

K. The Court charges the jury that the presumption of innocence attaches to the defendant at the beginning of the trial and remains throughout the completion of the case.

L. The Court charges the jury that the mere failure of the defendant to make inquiry of Hollis Bryant as to his title to the automobiles in question, or any one of them, is not sufficient to raise a presumption of guilty knowledge in the part of the defendant.

M. The Court charges the jury that knowledge on the part of the defendant that the vehicle in question was stolen, is essential before the defendant can be found guilty on any count in the indictment.

N. The Court charges the jury that if you believe from the testimony that prior to the time of the alleged offenses for which the defendant is now on trial, that he bore a good reputation in the community where he resided, for honesty and integrity, that is a circumstance in his favor which you will consider, together with all of the facts and circumstances in evidence.

O. The Court charges the jury that evidence of good character, when considered with all of the other evidence, may be sufficient to generate in your minds a reasonable doubt as to the guilt of the defendant, and if you do have such doubts, then it will be your duty to find the defendant not guilty.

P. The Court charges the jury that the defendant is presumed to be innocent and that such presumption of innocence attends the defendant throughout the trial.

Q. The Court charges the jury that before you can convict this defendant, you must believe from the evidence, beyond a reasonable doubt, not only that the vehicle in question was stolen and moving in interstate commerce, but also that the defendant knew that the same was stolen at the time of the purchase or the sale thereof, and further you must believe from the evidence beyond a reasonable doubt that the defendant did actually purchase or sell said vehicle, knowing the same to have been stolen. The Court further charges the jury that the burden of proof rests on the Government to prove to you by the evidence and beyond a reasonable doubt that the defendant knew that said vehicle was stolen at the time he purchased or sold the same and that the defendant is not under any obligation to prove his lack of knowledge that said vehicle was stolen, if you believe that the defendant did buy or sell the same.

R. The Court charges the jury that if you believe from the evidence that any of the vehicles which the defendant is charged with receiving or selling, had ceased to move in interstate commerce, at the time of the receipt or sale thereof by the defendant, if he did so, then you are charged that you cannot convict the defendant as to any vehicle which had ceased to move in interstate commerce at the time.

S. The Court charges the jury that it is not an offense under the Statutes of the United States, mere-

ly to receive a stolen automobile, and that before you can convict the defendant in this case of any offense charged in the indictment or any count thereof, you must first believe from the evidence, beyond a reasonable doubt, not only that the vehicle in question was stolen and moving in interstate commerce, but also that the defendant knew that the same was stolen at the time of the alleged offense of either receiving or selling the same, knowing the same to have been stolen, at the time, otherwise you must find the defendant not guilty.

T. The Court charges the jury that the fact that the automobiles was stolen, if you believe from the evidence that said automobiles or any one of them was stolen, that this, in itself, does not raise any presumption that the defendant knew that the same or any one of them were stolen and before you can convict the defendant, you must believe from the evidence, beyond a reasonable doubt, that the defendant knew that said automobiles were stolen at the time of the alleged offense, otherwise, there would be no crime.

7. The Court charges the jury that if you, or any one of you has a reasonable doubt as to the guilt of the defendant you cannot find the defendant guilty.

8. The Court charges the jury that the defendant is presumed to be innocent and that this presumption of innocence attends the defendant throughout the trial of this case.

9. The Court charges the jury that if you believe that any witness has willfully sworn falsely as to any

material fact in this case, then you may, as a matter of law disregard the entire testimony of such witness.

10. The Court charges the jury that the fact that an indictment has been returned in this case is not to be considered by you as evidence of the guilt of the defendant, and that an indictment is merely the means by which the case has been brought before you.

12. The Court charges the jury that if you believe that the defendant is not guilty, you must find him not guilty.

13. The Court charges the jury that evidence of good character is substantial evidence and is not to be treated lightly by you, in fact as a matter of law, such evidence, when considered along with all the evidence, may be sufficient to create a reasonable doubt in your minds, when without such evidence, there might not be such a reasonable doubt.

14. The Court charges the jury that knowledge on the part of the defendant that the automobile in question was stolen, at the time, was necessary, and before you can convict the defendant, you must believe from the evidence, beyond a reasonable doubt, not only that the defendant knew that such vehicle was stolen, but also that the defendant actually received the same with such knowledge, before you can convict the defendant under counts One, Three and Four of the indictment.

15. The Court charges the jury that knowledge on the part of the defendant that the automobile in ques-

tion was stolen at the time, was necessary, and before you can convict the defendant, you must believe from the evidence, beyond a reasonable doubt, not only that the defendant knew that such vehicle was stolen, but that the defendant sold such vehicle while the same was moving in interstate commerce and with guilty knowledge, before you can convict the defendant under count Five of the indictment, and unless you believe from the evidence that the defendant knew that such automobile was stolen and that the defendant sold the same while it was moving in interstate commerce, you must acquit the defendant as to count Five of the indictment.

16. The Court charges the jury that the purchase of a stolen automobile, without more, is not a crime.

17. The Court charges the jury that the sale of a stolen automobile, without more, is not a crime.

18. The Court charges the jury that if you believe from the evidence, or have a reasonable doubt therefrom that Hayden McBrayer and Jack Hamil, or either of them received either the Chevrolet automobile or the Oldsmobile involved in this case, then you cannot convict the defendant as to the vehicle so purchased under counts One, or Three of the indictment.

19. The Court charges the jury that if you believe from the evidence, or have a reasonable doubt therefrom that Bill Rhodes purchased the Cadillac automobile involved in this case, then you cannot convict the defendant under Count Four of the indictment.

20. The Court charges the jury that if you believe from the evidence that Bili Rhodes sold the Cadillac automobile involved in this case, then you cannot convict the defendant under Count Five of the indictment nor can you convict the defendant if you have a reasonable doubt from the evidence that Bill Rhodes sold the Cadillac automobile, under said Count.

22. The Court charges the jury that if you believe from the evidence, or have a reasonable doubt therefrom, that Bill Rhodes sold the Cadillac automobile involved in this case, then you cannot convict the defendant under count Five of the indictment.

23. The Court charges the jury that if you believe the testimony of Hollis Bryant, then as a matter of law he is an accomplice, and the law is that an accomplice's testimony must be considered with caution.

24. The Court charges the jury that the testimony of the witness Hollis Bryant, must be considered by you with caution.

25. The Court charges the jury that Hollis Bryant is a confessed thief and that you should consider that fact in considering his testimony and the weight that you should give it.

26. The Court charges the jury that Vernita Yarnell Philyaw is a confessed thief and that if you believe her testimony she is an accomplice, and the law is that an accomplice's testimony must be considered with caution.

27. The Court charges the jury that the testimony of the witness Vernita Yarnell Philyaw, must be considered by you with caution.

29. The Court charges the jury knowledge on the part of the defendant that the vehicle in question was tolen, is essential before the defendant can be convicted on any count in the indictment, and if you do not so find beyond a reasonable doubt, that the defendant did know that such vehicle was stolen, then you must acquit the defendant.

30. The Court charges the jury that if after considering all of the evidence in this case, your minds are left in such a state of uncertainty, that you cannot say beyond a reasonable doubt and to a moral certainty that the defendant is guilty, as charged, then you must acquit the defendant and say by your verdict, "Not Guilty".

32. The Court charges the jury that a conviction by you of this defendant on any count in the indictment, would authorize the Court to sentence the defendant to not more than five years imprisonment on each count of the indictment that you convict him on, in addition to fining the defendant not more than $5,000.00 on each count that he is so convicted on. This is in no way intended to charge you that the defendant is guilty, but merely to advise you of the possible punishment in the event that you do convict the defendant. The Court imposes the punishment, however, and your duty ends with your verdict of guilt or innocence.

33. The Court charges the jury that if you believe from the evidence in this case that the witness Hollis Bryant was released from the penitentiary in Atlanta with an express or implied understanding that such release was in the nature of a reward for his testimony, then you must consider the testimony of such witness with caution.

36. The Court charges the jury that the defendant is not charged with selling the Chevrolet automobile involved in the case.

37. The Court charges the jury that the defendant is not charged with selling the Oldsmobile automobile in this case.

38. The Court charges the jury that the witnesses McBrayer and Hamil, if you believe the evidence in this case were accomplices of the defendant, and that as a matter of law their testimony must be considered by you with caution.

41. If you believe from the evidence beyond a reasonable doubt that Bill Rhodes bought and sold the Cadillac automobile referred to in this case, then you cannot convict this defendant as to said automobile.

42. The Court charges the jury that if you believe from the evidence, or have a reasonable doubt thereof that McBrayer and Hamil bought the Chevrolet automobile referred to in this case, then you must find the defendant not guilty as to said automobile.

In the District Court of the United States for the Middle District of Alabama, Northern Division, Montgomery, Alabama.

Before Hon. Frank M. Johnson and a Struck Jury.

March 28, 1957—April 8, 1957.

United States of America,

vs. C.A.No. 10,747-N.

Herman Roberson.

Appearances:
Hon. Hartwell Davis, Hon. Robert Varner, Hon. Wm. J. Fuller, Jr., Hon. Charles Reynolds.

The Court:
Calling for trial the case of United States versus Herman Roberson. What says the Government?

Mr. Davis:
We would like to call our witnesses, please.

The Court:
All right.

(The witnesses were called.)

The Court:
What says the Defendant?

Mr. Fuller:
Your Honor, before we announce I would like to renew my motion for a bill of particulars, which the

Court overruled on the 6th of this month. I call that to the Court's attention.

The Court:
All right. The motion is overruled and denied.

Mr. Fuller:
We would like to have an exception.

The Court:
All right. What says the Defendant?

Mr. Fuller:
Defendant announces ready for trial.

The Court:
Call your first witness.

W M. McCARTY, called as a witness, being duly sworn, testified as follows:

Direct Examination.

Mr. Varner:
Q. You are W. M. McCarty?
A. Yes, sir.
Q. Where do you live, Mr. McCarty?
A. In San Antonio, Texas.
Q. Back in January of 1953, where did you live?
A. In San Antonio, Texas.
Q. Were you at that time the owner of a 1948, green, Chevrolet motor number FAA-600987?
A. Yes, it was in my name, it was floor planned and on a used car lot in my name.

Q. Do you know a man named Hollis Bryant?

A. No, not by that name.

Q. If it please the Court, I would like to have Hollis Bryant to come in and let the witness look at him. (Mr. Bryant comes in.) Do you know this man?

A. I would not have known him if I had met him on the street. I saw him yesterday and he told me he would be here.

The Court:

Now, Gentlemen, you will not consider that; that is not competent evidence; that was not responsive. You will not consider that.

Mr. Varner:

But you do know this man?

A. Yes, sir.

Q. Did you, on or about January 30, 1953, know that man?

A. Yes, by sight, not by name.

Q. Well, at that time, where did you see him?

A. He was with somebody, they were supposed to be—

Mr. Fuller:

We object to what they were supposed to do.

Mr. Varner:

Just tell us where you saw him?

A. Just coming around the used car lot in San Antonio.

Q. Was your car, that we have already mentioned, on that lot?

A. Yes, sir.

Q. Was it on or about January 1st, of that year, that that car was stolen from that lot?

Mr. Fuller:
I object, Your Honor, where it was stolen from. That calls for a conclusion of this witness.

The Court:
Sustained, do you insist on your question?

Mr. Varner:
No, sir.

Mr. Fuller:
We would like for Your Honor to state whether it is necessary to assign grounds to our objections in this case?

The Court:
All right. It will not be necessary during the course of this trial, for the Attorneys to assign any grounds in support of objections they may make. And when an objection is made, it will be assumed by the Court that counsel have in mind, and the Court has in mind, any and all legal grounds that could be assigned in support of the objection.

Mr. Varner:
What happened to that car, on or about the 1st of January, 1953?
A. Well, it was taken from the lot, during the noon hour.
Q. Did anybody have permission to take it?
A. No, sir.

That is all. Your witness.

Mr. Fuller:

Mr. McCarty, you say the car was taken off the lot during the noon hour, that would mean that you were there or not there, at the time?

A. It was taken off. I was not there.

Q. Well, if you were not there, you don't know of your own knowledge that it was taken off, do you?

A. No.

Q. You don't know who took it?

A. I did not see anybody take it.

Q. Was Hollis Bryant in the used car business, in San Antonio, Texas?

A. No, I just think he was wholesaling.

Q. Did he handle some legitimate cars, to your knowledge?

A. I do not know.

Q. Your best judgment is though, that he was wholesaling automobiles in San Antonio, wasn't he?

A. He was going out buying them and selling them to dealers.

Q. Yes, sir, going out buying them and selling to dealers. All right. That is all.

The Court:

Are you through?

A. Yes, sir.

The Court:

I want to ask him a question. Was that automobile on the lot that day in 1953, when you left for lunch?

A. Yes, sir.

Q. Was it there when you returned?

A. No, sir.

Q. Did you authorize any one to take it while you were gone?
A. No, sir.

The Court:
That is all. I want to ask you not to make any statements in the presence of the jury. It is time we were taking a short recess anyway. You, Gentlemen of the Jury, I am going to recess Court at this time for ten minutes. I am not going to, during the course of this trial, require you to keep yourselves together; you are, however, cautioned not to commence your deliberations in the case—do not form any opinion as to the guilt or innocence of this defendant until the Court finally submits the case to you. Do not discuss the case between yourselves, and do not permit anyone to discuss it in your presence, or in your hearing. If anyone does violate that rule of Court, I will expect you to call it to my attention as soon as possible. You may go out into the hallway, Gentlemen, Court will be in recess for ten minutes. (Court reconvened after ten minutes.)

Mr. Fuller:
I would like to ask the Court to ask the jury to step outside.

The Court:
Take the jury outside.

Mr. Fuller:
Your Honor, a matter has arisen, I have been informed that the District Attorney, and several of the jurors were in the rest room, and Mr. Davis said something and I would like to ask him if that is true,

if there was any conversation or anything said between him and any juror.

The Court:
You may ask him that.

Mr Fuller:
Mr. Davis, were you in the rest room during recess with any of the jurors in this case?

Mr. Davis:
Yes, sir.

Q. How many jurors were in there, Mr. Davis?
A. I know of one.
Q. Do you know whether or not there were several others in there?
A. I do not.
Q. Did you have a conversation with a juror, Mr. Davis?
A. One of the jurors asked me if their not being kept together meant that they could go home if we didn't get through with the trial tonight. I said, "Yes, sir."
Q. Was there any other conversation, Mr. Davis?
A. I said, I could answer a question like that, but I could not say anything to him about the case, and I would not, and neither would Mr. Fuller, or Mr. Reynolds in my opinion.
Q. Was anything said about a recess, Mr. Davis?
A. I said I was glad we took the recess at that time that I needed it.
Q. Was there anything else said?
A. Not that I recall.
Q. Did the jurors say anything to you?

A. Nothing else that I recall.

Q. Would you state to the Court, which juror or jurors, were in the rest room at the time?

A. The only one that I noticed was Mr. Edwards.

Q. Is Mr. Edwards a personal friend of yours?

A Yes, sir.

Q. Did you tell me a few minutes ago that I made a mistake to put Mr. Edwards on the jury?

A. No, sir.

Q. Will you state to the Court what you did tell me about Mr. Edwards?

A. I said I was not surprised that you wished to backstrike Mr. Edwards.

Q. Will you explain to the Court why that you were not surprised that I wished to backstrike Mr. Edwards as a juror?

A. Because he stated that he knew Mr. Varner, and he is from Mr. Varner's home town, and because he stated that he knew me.

Q. How well acquainted are you with Mr. Edwards?

A. I have never been in his home. I have known Mr. Edwards for a good many years.

Q. How many years, Mr. Davis?

A. I would say I have known Mr. Edwards thirty years.

Q. Have you handled business transactions for Mr. Edwards?

A. No, sir.

Q. What has been the extent of your knowledge of Mr. Edwards?

A. I have seen him from time to time, I know that he lives in Tuskegee, I think he went to Auburn College, at the same time I did, that is practically the extent of my knowledge of him. I never recall being

at any social occasion with him, and never handled a case of business for him.

Q. Have you had political dealings with Mr. Edwards?

A. No, sir.

Q. No political association with Mr. Edwards?

A. No, sir.

Q. And your statement is that he is the only juror that you knew?

A. He is the only one that I knew that was on the jury and I happened to see him in the rest room when I went in the rest room. He was already in there when I went in.

Q. Did the other jurors hear the converation, if they were jurors,—I will put it this way, first, were there other people in the rest room at that time?

A. There was a large number of people in there, and I made the additional statement that it looked like a football game.

Q. The whole crowd?

A. No, in the rest room. It was such a push, and it looked like a football game. I hadn't seen any juror at that time.

Q. But you knew Mr. Edwards to such an extent that you would state to me that you were not surprised that I asked the Court, out of the presence of the jury, for permission to backstrike Mr. Edwards, is that correct?

A. I told you exactly why I did that a moment ago. You asked for my reason and I told you he lived in the same town as Mr. Varner, and he announced that here in open Court.

Mr. Fuller:
Your Honor, based on the information given by the District Attorney, I ask the Court to declare a mistrial in this case.

The Court:
How do you feel that the defendant has been prejudiced by this?

Mr. Fuller:
Your Honor, I feel that any contact between—

The Court:
You had knowledge of the acquaintanceship between the District Attorney and the juror, prior to the time you started to strike, didn't you?

A. I didn't know the extent of it, Your Honor. I did not understand that it was of such an extent that he himself would feel that I would do well if I could have had the juror excused. I did not know it was that strong.

Mr. Davis:
I did not say that, Your Honor. I said I was not surprised that he wished to do it.

Mr. Fuller:
If it is that strong, Your Honor, it is a lot stronger than it appeared in this Court room. I thought it was just a casual acquaintance.

The Court:
You made no effort to interrogate Mr. Edwards further regarding the extent of the acquaintanceship with Mr. Varner, or with the District Attorney?

A. I did not, Your Honor, I assumed that it was not of such a nature that he would be prejudiced, he stated that he was unprejudiced in this case, when you asked him that question.

The Court:
That is right.

Mr. Fuller:
I had no idea that the extent of the acquaintance was of such that the District Attorney, himself, would realize that I was up-set, and should have rightfully have been up-set, that the man was on the jury.

The Court:
Is that the basis for your request for a mistrial?

A. Yes, sir.

The Court:
Your request is overruled and denied.

Mr. Fuller:
We would like to have an exception, Your Honor.

Mr. Varner:
Your Honor, Mr. Reynolds and I had a conversation in here during recess. I do not believe Mr. Reynolds had any opportunity at that time to know of this conversation between Mr. Edwards and Mr. Davis, in which he stated to me that they made one mistake and I asked him, "Who do you mean, Joe?" Speaking of Mr. Edwards, and he said, "Yes." Which showed, —well, I leave it up to Your Honor, what it showed.

Mr. Fuller:
Your Honor, I would like to make a further observation there, Mr. Varner knows this juror well enough to call him by his first name, and it is up to me to call him by his second name, and I—

The Court:
I know of no basis for this Court to declare a mistrial of the case up to this point.

Mr. Fuller:
We respectfully except, Your Honor.

The Court:
All right.

Mr. Davis:
May I make one further remark, Your Honor, I am confident that from what I know of Joe Edwards—

Mr. Fuller:
I object and ask that be excluded from the record.

The Court:
That will be excluded from the record.

Mr. Fuller:
Your Honor, while the jury is out, there is one further thing—

The Court:
Do you wish me to re-interrogate the jury along this line, and ask them questions in substance and effect if any event has taken place since they were selected on this jury that they feel would prejudice

them to such an extent that they could not follow the law and the evidence in this case and render a fair and true verdict?

Mr. Fuller:

Your Honor, my purpose in asking that the jury be excused from the room was that I didn't want to embarrass the jury, and I don't want them to feel that I don't have any confidence in them, if we did that—

The Court:

All right. I can phrase that question where there will be no reference made to this specific incident, I can phrase it generally, and ask them if anything has transpired since the time they were selected on this jury that would in any way embarrass them or prejudice them one way or another, if you desire it, I will interrogate them along that line, without making any specific reference to this incident at all.

Mr. Fuller:

Of course, under Your Honor's present ruling a mistrial has been denied, which presumably, of course would mean we would go ahead with the trial since I was the one that asked that the jury be excluded. I am afraid, Your Honor, they might add up two and two.

The Court:

I will state this, that if you request it, I will interrogate them further, and if any juror indicates that something has transpired that would embarrass him or prejudice him to such an extent that he could not render a fair and impartial judgment in this case, I will declare a mistrial.

Mr. Fuller:

I would be afraid, Your Honor, that they would think that we have no confidence in them, and if the jury got that opinion, then I think there would be little question, but that they would convict the man regardless, that is what I was afraid of, that is why I asked that the jury be excluded from the room. There is one other thing while the jury is out, I noticed these government witnesses standing down at the end of the hall, during the recess, talking with each other and I don't believe the Court cautioned them not to discuss their testimony. They were in a group there, and I do not know what they said, but they were having a discussion as a group and I want them cautioned on that.

The Court:

I will caution them on that, and I will permit you to, if you feel it is necessary to interrogate them as they are called on the stand, along that line.

Mr. Davis:

At the same time I would like to have the defense witnesses cautioned.

The Court:

Mr. Bailiff, sometime within the next few minutes will you caution all the Government witnesses and all the defense witnesses, not to discuss their testimony with any other person, other than the lawyer in the case until the case is concluded.

All right, bring the jury back in. Call your next witness.

DR. J. P. MELVIN, being called as the next witness, being duly sworn, testified as follows:

Direct Examination.

Mr. Davis:

Q. What is your name, please?

A. Joseph P. Melvin, Jr.

Q. Are you a physician and an M. D.?

A. I am.

Q. Where do you live?

A. In Jackson, Mississippi.

Q. How long have you lived there?

A. Since 1948, I believe.

Q. Dr. Melvin, in March of 1953, were you living at Jackson, Mississippi?

A. Yes, sir.

Q. Did you, at that time, know one Hollis Bryant?

A. Yes.

Q. Had you known him any length of time, or did you meet him at that time?

A. I met him on the morning of March 15, 1953.

Q. Have you seen him here?

A. I have.

Q. At that time, did you have an Oldsmobile automobile?

A. I did.

Q. Do you have the motor number of that car with you, Doctor?

A. I do.

Q. Will you state it to the jury?

A. Yes, sir. HA 366 315H.

Q. Dr., what color was that car?

A. Green.

Q. Was it a two-toned car or one-tone, one color?

A. It was one color.
Q. How many seats did it have?
A. One.
Q. Just a front seat. How many doors did it have?
A. Two.
Q. What is the model called?
A. Business coupe.
Q. What year was it?
A. 1950.
Q. A 1950 Oldsmobile?
A. Yes.
Q. Was it a 98 or 88 or what sort of Oldsmobile?
A. An 88.
Q. It was an 88 Oldsmobile, business coupe, two-doors, sedan, green in color, with the motor number you have given us, is that right?
A. That is right.
Q. Did you let Hollis Bryant have that car?
A. I did.
Q. Under what circumstances?
A. Mr. Bryant came by the office about 9:15 on the morning of March 13, and stated that he wished to purchase this car. he had been given my name by a local Oldsmobile man in Jackson. I checked on him at that source and they told me that he was in the market for a car. At 9:15 A.M. he came by and asked me to take him riding in the car. I told him to take the key and to come back in an hour. At the end of an hour he did not return and at the end of two hours I notified the authorities.
Q. Did he ever return with the car?
A. No, sir.
Q. When was the next time you saw Hollis Bryant?
A. Yesterday.

Q. Where?

A. In the District Attorney's office, here in this building.

Q. I believe I would like to ask the Court to have him come in here, so there would be no question about that.

The Court:

That won't be necessary. Unless counsel for the defense raises a question about it.

Mr. Davis:

All right. That is all. You may have the witness.

Mr. Fuller:

Dr. is this car referred to as a Club Coupe, this Oldsmobile?

A. Possibly, by the Company. I call it a business coupe.

Q. In your best judgment the Company would refer to it as a Club Coupe, is that right?

A. Possibly. I don't know their terminology.

Q. Did you know Mr. Hollis Bryant previous to this time?

A. No, sir.

Q. Did he appear to you to be an honest person did he?

Mr. Varner:

Object to how he appeared.

Mr. Fuller:

Well, you did have enough confidence in Mr. Bryant to let him go off with your automobile and the keys to it, didn't you?

A. Yes, sir.
Q. And you let him go with the keys and the automobile?
A. That is right.

That is all.

The Court:
Anything further from this witness?

A. No, sir.

The Court:
Let me ask the witness a question. Did the events you have just related occur in Jackson, Mississippi?
A. They did.
Q. I believe counsel said you may be excused, Dr. You might go by the Clerk's office and the Marshal's office and they will instruct you and assist you.

W. H. MARSHALL, called as a witness, being duly sworn, testified as follows:

Direct Examination.

Mr. Varner:
Q. Your name is Mr. W. H. Marshall?
A. Yes, sir.
Q. Where do you now live, Mr. Marshall?
A. I live at Broken Arrow, Tulsa, Oklahoma.
Q. Back in June, 1953, where did you live?
A. Same place.
Q. Were you at that time the owner of a 1951 Blue Cadillac, Motor Number 51 609 5134?

A. I believe that is the number.
Q. Do you have it with you there?
A. Yes, sir. 516095134.
Q. That is correct, Mr. Marshall.

Mr. Fuller:
Say that number again, please, sir. I didn't get it.
A. 516095134.

Mr. Varner:
Q. Was that car stolen from you at that time?

Mr. Fuller:
I object.

The Court:
I sustain the objection.

Mr. Varner:
When was the last time that you saw that automobile?
A. About the 6th of June, in 1953.
Q. Where was it?
A. It was at 3140 South Victory Street, in front of the house.
Q. Did you give anyone authority to move it?
A. No, sir.
Q. In what town was it?
A. Tulsa, Oklahoma.
Q. And was it moved?
A. It was.
Q. Or was it there when you returned for it?
A. No, I have never seen it since.

Mr. Varner:
That is all.

The Court:
Cross examine.

Mr. Fuller:
Now, this Cadillac, a 1951 model blue Cadillac, motor number 516095134, is that correct, sir?
A. I think so.
Q. That is all.

The Court:
Do you want to excuse him?

A. Yes, sir.

The Court:
Go to the Marshal's office and they will assist you in checking out. Call your next witness.

HOLLIS BRYANT, called as a witness, being duly sworn, testified as follows:

Direct Examination.

Mr. Davis:
Q. What is your name?
A. Hollis Bryant.
Q. Where do you live?
A. Buffalo, South Carolina.
Q. Mr. Bryant, did you steal a Cadillac automobile in San Antonio, Texas, in the early part of 1953 and transport it to Montgomery, Alabama?

Mr. Fuller:
I object. It calls for a conclusion from this witness as to whether it was or was not stolen. It is leading, it suggests the answer.

The Court:
Sustained.

Mr. Davis:
Mr. Bryant, were you in San Antonio, Texas in early 1953?
A. Yes.
Q. Did you take an automobile?

Mr. Fuller:
I object.

The Court:
On what grounds?

Mr. Fuller:
The question in general, did he take an automobile, it is not shown there was any automobile involved in this case, it still involves the conclusions of the witness.

The Court:
I sustain that.

Mr. Davis:
Did you leave San Antonio, Texas, in early 1953?

Mr. Fuller:
That question is clearly leading, Your Honor.

The Court:
Sustained.

Mr. Davis:
Did any one leave San Antonio with you?
A. Vernita Yarnell.
Q. Is her name now, Vernita Yarnell Philyaw?
A. Yes, sir.
Q. She has married since then?

Mr. Fuller:
We object to that line of testimony. We don't know what it has to do with this case.

The Court:
It is preliminary, overrule your objection.

Mr. Davis:
How did you two leave San Antonio, by what means?
A. We left in a 1948 Chevrolet.
Q. Did that Chevrolet belong to you?
A. No, sir.
Q. How did you obtain that Chevrolet?
A. I went to a car lot and got permission to drive it, I don't recall the distance, 20 or 30 miles, to another town and went on out of town.
Q. Do you know the name of the other town?
A. No, sir.
Q. Did you drive it to the other town?
A. No, sir.
Q. Where did you drive it to?
A. To Montgomery, Alabama.
Q. Do you recall about when you got to Montgomery?
A. No, sir. It was the first part of 1953.

Q. What color was that 1948 Chevrolet automobile?

A. I could not be positive.

Q. Do you have a judgment?

A. It was either green or blue.

Q. Do you have a judgment as to whether it was a dark or light green or blue?

A. I believe it was a light color.

Q. Mr. Bryant, when I ask you if you have a judgment please say I do, or I don't. Then I will ask you the question, please. Do you recall whether that was a two-door or a four-door Chevrolet?

A. No, sir.

Q. Did anyone arrive in Montgomery with you, in that automobile?

A. Yes, sir.

Q. Who was that?

A. Vernita Philyaw.

Q. The same person you left San Antonio with?

A. Yes, sir.

Q. Is she here today?

A. I believe so.

Q. Did you have any information as to where you might dispose of that car here in Montgomery?

Mr. Fuller:

I object.

The Court:

Sustained.

Mr. Davis:

Where did you go when you got to Montgomery with the car?

A. Directly I don't recall, indirectly, I went to a locksmith.

Q. Did you see him?
A. Yes, sir.
Q. Did he do anything about the car?
A. I had a key for the car, but it didn't work very well, and I had it replaced.
Q. And when you did that, where did you go from there?
A. To a car lot.
Q. Did you ask the locksmith any directions?
A. I did.
Q. Where did you go?
A. I went to a car lot here in town.
Q. Whom did you see there?
A. I did not know until afterwards.
Q. Did you see the defendant, Herman Roberson?
A. Not at this lot.
Q. Did you then go to another lot?
A. I did.
Q. Whom did you see there?
A. I believe I stopped at two different lots asking for information.
Q. And did you go to a third lot?
A. I did.
Q. Whom did you see there?
A. Mr. Herman Roberson, and Hamel and McBrayer.
Q. Tell me this, do you see him now?
A. Yes, sir.
Q. Which one of those men did you see first?
A. I don't recall.
Q. Did you know any of them?
A. Not at that time.
Q. Which one did you see first?
A. I don't recall.
Q. Did you meet Herman Roberson?

A. I did.

Q. And you see him now, will you point him out to the jury?

A. The one on the end.

Q. How did you go to that lot, did you walk or ride?

A. I drove the Chevrolet.

Q. Was anyone with you in the Chevrolet, when you got there?

A. Vernita Yarnell.

Q. What occurred when you got there?

Mr. Fuller:
I object, Your Honor.

The Court:
Sustain it.

Mr. Davis:
Did you ask for any one when you got to that lot?

A. I did.

Q. Whom did you ask for?

Mr. Fuller:
I object.

The Court:
Sustained.

Mr. Davis:
Did you ask for Herman Roberson?

Mr. Reynolds:
I object.

The Court:
Sustained.

Mr. Davis:
Did you see Herman Roberson?
A. I did.
Q. Did you have any conversation with him?
A. I did.
Q. What was the conversation between you and Herman Roberson?

Mr. Fuller:
I object.

The Court:
Overruled.

A. The exact conversation I don't recall.
Q. As nearly as you can, tell what you said to him and what he said to you?
A. I wanted to sell him the Chevrolet.
Q. And did you mention the title?
A. I think so, yes.
Q. What did he say about it?

Mr. Fuller:
I object.

The Court:
Overruled. That was not responsive. Rephrase the question.

Mr. Davis:
As nearly as you can recollect, what did you tell him about the title and what did he say about it?

Mr. Fuller:
I object.

The Court:
Overruled.

A. I told him that I had a Chevrolet and did not have a title for it, and Texas, being a title state I could not sell it there, but I understood that I might sell it to him.

Mr. Fuller:
We object. I move that be excluded.

The Court:
Is that the statement you made to him?

A. As near as I can remember.

The Court:
All right. Overrule the objection.

Mr. Davis:
Did you come to an agreement as to the price for the car, or not?

A. We did.

Q. What did he agree to give you for the automobile?

A. I don't recall the exact price.

Q. Well, do you have a judgment?

A. I do.

Q. In your best judgment, what was it?

A. Either $300.00 or $350.00.

Q. Did he give you any money? Did he pay you for the car?

A. I received pay for the car, either $300.00 or $350.

Q. Was it cash or a check?

A. It was cash.

Q. Did you do anything with that money at that time?

Mr. Fuller:
I object to that.

The Court:
Sustained.

Mr. Davis:
Did you or did you not give him a bill of sale?

Mr. Reynolds:
I object to it.

The Court:
Overruled. I take it when you say "him" you mean—

Mr. Davis:
Yes, sir, Herman Roberson.

A. I signed a bill of sale.

Mr. Davis:
Was it made out or not?

Mr. Reynolds:
I object.

The Court:
Sustained.

Mr. Davis:
Was the bill that covered this Chevrolet filled out or was it a blank bill of sale?

Mr. Fuller:
We object, he is trying to tell the witness the answer.

The Court:
Overruled.

Mr. Davis:
You may answer.
A. I don't recall, sir.
Q. Where was Miss Yarnell, at that time, if you know.
A. I couldn't say definitely.
Q. When you got the money and signed that bill of sale, what did you do?

Mr. Fuller:
I object.

The Court:
Sustained. What he did after the deal was consummated, does not matter, when he got the money it was consummated, as far as I am concerned.

Mr. Davis:
Did you go to Jackson, Mississippi?
A. Yes, sir.
Q. When you were in Jackson, Mississippi, did you see any one about an automobile?
A. I saw several people about automobiles.
Q. Did you see Dr. J. P. Melvin here today?

A. Yes, sir, I did.

Q. Did you see him in Jackson, Mississippi?

A. Yes, sir.

Q. What did you see him about?

A. About an automobile.

Q. Did you make any arrangements with him about that automobile?

A. I tried his automobile out.

Q. Did you have any agreement about returning it?

A. Yes, sir.

Q. How long were you to have it and try it out?

A. I don't recall the definite time that was set, I was to take it and let my wife see it.

Q. Did you ever return it to him?

A. I did not.

Q. What did you do with that automobile?

A. I sold it.

Q. Did you sell it in Jackson?

A. No, sir.

Q. Where did you sell it?

A. Here in Montgomery.

Q. Did you have anyone with you?

A. I did.

Q. What kind of an automobile was that, that you received from Dr. Melvin?

A. A 1949 or 1950 Oldsmobile, five passenger.

Q. What kind of Oldsmobile, I did not catch that.

A. An 88 Oldsmobile, five passenger coupe.

Q. Is that a four door or a two door?

A. A two door.

Q. What color was it?

A. It was a dark color.

Q. Where did you go with that automobile when you got to Montgomery?

A. To Mr. Herman Roberson's lot.
Q. Did you see Mr. Roberson?
A. I did.
Q. Did Miss Yarnell leave Jackson with you in the car or not?
A. She did.
Q. Was she with you when you got to the lot?

Mr. Fuller:
We object, he has not said anyone was with him.

Mr. Davis:
Was anyone with you when you got to the lot?
A. Yes, sir.
Q. Who was she?
A. Miss Yarnell.
Q. Did you sell that car to any one there?

Mr Fuller:
I object.

The Court:
Overruled.

Mr. Davis:
Did you sell that car to any one there?
A. I did.
Q. To whom?
A. Mr. Herman Roberson.
Q What did he pay you for the car?
A. Either $300.00 or $350.00.
Q. Then did you have a conversation with him there when you sold him the car?
A. We talked. yes, sir.

Q. What did you tell him about where you got this car, if anything?

Mr. Fuller:
I object.

The Court:
Overruled.

A. I don't recall, sir.
Q. Do you recall whether you told him you got this car in Jackson, Mississippi?

Mr. Fuller:
I object.

The Court:
Sustained.

Mr. Davis:
To refresh your recollection—

Mr. Fuller—
He is trying to impeach his own witness, Your Honor.

The Court:
Overruled.

Mr. Davis:
To refresh your recollection, I show you this transcript—

The Court:

You can ask him a question, Mr. District Attorney, and to that extent I will sustain the objection. I will permit counsel on either side, if the occasion arises, to attempt to refresh witnesses recollection by asking questions.

Mr. Davis:

Yes, sir. To refresh your recollection, did you tell him, "I picked this car up in Jackson, Miss., and brought it to you?"

Mr. Fuller:

I object.

The Court:

What is the basis for your objection?

Mr. Fuller:

That counsel has undertaken to read from what purports to be a transcript in the former trial, not some memorandum that was made by the witness, and he is attempting to impeach his own witness by his testimony on a former trial. He is in effect cross examining his own witness.

The Court:

I will permit either side during the course of this trial, if the occasion arises, and counsel considers it necessary to ask certan questions for the purpose of attempting to refresh his witnesses' recollection.

Overrule your objection.

Mr. Davis:

Did you tell him, "I picked this car up in Jackson and brought it to you?

A. I don't recall, sir, whether I told him where the car came from or not.

Q. Do you recall any other conversation between the two of you, on that occasion, concerning that automobile?

A. I can't say that I remember word for word the conversation.

Q. Do you have a judgment as to what you said on that occasion?

A. Yes, sir.

Q. In your best judgment can you recall anything else that was said to him, Herman Roberson, on that occasion about that automobile?

A. Well, I wanted to sell the automobile, of course, and we dickered as to the price.

Q. Now, to refresh your recollection, did you say this to him, on that occasion, to the best of your recollection—

Mr. Fuller:

I object to the reading of the testimony from the record on the previous trial. This is a 'de Novo' trial.

The Court:

I don't know what he is reading from, and I am sure the jury would not have known if you hadn't stated it, Mr. Fuller. It hadn't been mentioned until you stated it. Overrule your objection.

Mr. Davis:

"I had just stolen it and I had just come in from Jackson, Mississippi?"

Mr. Fuller:
Your Honor, I ask that be excluded.

The Court:
Or anything to that substance and effect.

Mr. Davis:
Or anything to that substance and effect?
A. I could have said that.

The Court:
That is not responsive, Gentlemen, you will not consider that.

A. I don't recall, sir.

Mr. Davis:
When he finished talking with you, did he give you the money?
A. He did.
Q. Did you give him a bill of sale?
A. I did.
Q. Now, to refresh your recollection, did you say this, or this in substance, to Herman Roberson on that occasion—

Mr. Fuller:
I object.

The Court:
Wait for the question.

Mr. Davis:
"That it was a hot car?"

The Court:
Overrule your objection.

A. I don't recall if I stated those words.
Q. Did he make any arrangements with you at that time about another automobile?

Mr. Fuller:
I object.

The Court:
I sustain the objection to the question in that form, you may ask him what was said on that occasion, between the two, with reference in another automobile, but the word arrangement is improper. That answer will be excluded, Gentlemen.

Mr. Davis:
What did he say to you and what did you say to him, if anything, about another automobile at that time?
A. He told me that he would like to have a late model Cadillac with air conditioning.
Q. Did you find such a Cadillac?
A. Not to answer that exact description.
Q. Did you find a late model Cadillac?
A. I did.
Q. Where?
A. In Tulsa, Oklahoma.
Q. When?
A. First part of 1953.
Q. Did you buy that Cadillac?
A. No.
Q. Did you own that Cadillac?
A. No, sir.

Q. How did you come in possession of that Cadillac?
A. I stole it.
Q. Where did you get it?
A. Off the street.
Q. In what city?
A. Tulsa, Oklahoma.
Q. Will you describe that Cadillac?
A. I believe it was a 1951 Fleetwood.
Q. Well, how many doors did it have?
A. I can't recall.
Q. What color was it?
A. Light blue, I believe.
Q. Were you and Miss Yarnell living together at that time?
A. We were.
Q. Where were you living at that time, together?
A. In Tulsa, Oklahoma.
Q. Did she come with you to Montgomery in that car?
A. She did not.
Q. Did you take that car anywhere?
A. Yes, sir.
Q. Where did you take it?
A. Yes, sir.
Q. Where did you take it?
A. To Montgomery.
Q. Did you show the car to Miss Yarnell?

Mr. Fuller:
Your Honor, I object to whether he showed the car to Miss Yarnell, or not.

The Court:
Sustained.

Mr. Davis:
Did she have an opportunity to see the car?

Mr. Fuller:
I object to that.

The Court:
Sustained.

Mr. Davis:
If Your Honor please, I expect to connect that up.

The Court
Well, Miss Yarnell is here, I believe I heard you gentlemen observe, and if she is, she can say whether she saw it or not.

Mr. Davis:
Now, when you got to Montgomery, where did you go with that car?
A. To the same car lot.
Q. Did you see Mr. Herman Roberson at that car lot?
A. No, sir.
Q. Did you have any dealings with any one else there?

Mr. Fuller:
We object.

The Court:
Sustained.

Mr. Davis:
Did you see Mr. Herman Roberson when you had that car here in Montgomery?

A. I did.
Q. Where did you see him?
A. At his farm.
Q. Where was that?
A. It is out of town here somewhere, a short ways.
Q. Would you know the name of the road if I call it?
A. I don't know at the time, but I have heard it though.
Q. Was it Narrow Lane Road?
A. That sounds like the name.
Q. Did you find Mr. Roberson?
A. Yes, sir.
Q. Where did you find him?
A. Down in the pasture.
Q. Did you go down in the pasture?
A. I did.
Q. Was he walking or how was he proceeding?
A. No, sir. He was in a jeep, I believe you call it.
Q. Was that jeep running along at the time you saw him?
A. No, sir, it was stuck in the river bed.
Q. I see, you call it a river bed, how big was it?
A. It was a stream, probably a creek or a branch.
Q. I see, did you talk to Mr. Roberson about this Cadillac automobile, on that occasion?

Mr. Fuller:
I object.

The Court:
Overruled.

A. No.
Q. Did you talk to him later?
A. Yes, sir.

Q. When?

A. Later in the afternoon, or early that night.

Q. Whereabouts?

A. Up at his house.

Q. Did he make any agreement with you about that car?

A. He told me that he could not buy it at that time, he did not have the money, I was to come back the next day.

Q. How much—did you agree on the price for the car?

A. We did.

Q. How much did he agree to pay you?

A. One thousand dollars.

Q. Had anyhing been said about the price of that automobile to you by Mr. Roberson, about the Cadillac automobile you were to get for him when you were here in March with the Oldsmobile?

A. Yes, sir.

Q. What?

A. That he would pay one thousand.

Q. And on this occasion, when you talked with him there, at his home that evening, did you agree on the price again?

A. I don't recall whether we agreed on the price that evening or the following morning.

Q. All right, when you saw him the following morning did you or did you not sell him that Cadillac automobile,

A. Yes, sir.

Q. What did he pay you for it?

A. $300.00.

Q. By check or by cash?

A. By cash.

Q. How did he pay you for the Oldsmobile, was it check or cash?

A. It was cash.

Q. Did he pay you anything else for this Cadillac automobile?

A. No, sir.

Q. Did he agree to pay you anything else for it?

A. Yes, sir.

Q. What?

A. Automobile registrations.

Q. How much was he going to give you in automobile registrations?

A. Twenty-five dollars for a registration.

Q. How many dollars worth of automobile registrations was he to give you at $25.00 a registration?

A. Seven hundred ($700.00).

Q. What were those automobile registrations that he was going to give you at $25.00 a registration, what were they to be for?

A. It was for other automobiles.

Q. That you were to get registrations or that he was?

A. That he was getting them.

Q. It was for you?

A. Yes.

Q. Did you tell him what kind of cars they would be, whether they would be stolen or whether ones you owned? Did you tell him what sort of cars they would be?

Mr. Fuller:

I object to that, Your Honor.

The Court:

I sustain the objection to the question in that form.

Mr. Davis:

Was anything said about whether those cars for which those registrations were to be obtained was to be stolen cars or cars that you had purchased legitimately?

Mr. Fuller:

I object to that.

The Court:

Overruled.

A. I don't recall the exact form.

Q. Well, do you have a recollection, and a judgment as to what was said about it?

A. About the type of cars? I couldn't say that I do.

Q. Did Mr. Roberson, when you had that Cadillac here, and sold it to him, did he say anything to you about motor numbers on automobiles?

A. Yes, sir, I think so.

Q. What did he say to you about motor numbers on automobiles?

A. To the best of my recollection, he said by changing any one, or all, of the last three numbers, that it made a complete new number. The first part of the number corresponds with the series and the year and all that.

Q. Did he do anything on paper at that time about motor numbers?

A. I don't recall.

Q. To refresh your recollection, did he show you how a 3 could be changed to an 8, and a 1 to a 7,on paper?

Mr. Fuller.
I object, Your Honor.

The Court:
Overruled.

A. I don't know about those particular numbers, but I think he did demonstrate it for me.

Mr. Fuller:
I object to what he thinks, Your Honor.

The Court:
I sustain objection to what he thinks. Is that your best judgment, Mr. Bryant?

A. Yes, sir, it is.

The Court:
All right.

Mr. Davis:
That Cadillac automobile—when you stole it, was the key in it, or did you have another key that would fit it?

Mr. Fuller:
Your Honor, I object.

The Court:
Overruled.

Mr. Davis:
You may answer.

A. It did not have a key in it.

Q. How did you start the car?

A. I used what in known as a jumper.

Q. Did you have a key for that car when you sold it to Herman Roberson, and turned the key over to him?

A. No, sir.

Q. Did he see how you started it at the time?

A. I don't recall starting the motor, sir.

Q. You mean he bought the car without the motor having been started in his presence?

A. To the best of my recollection.

The Court:

Gentlemen, do not discuss this case with any one, do not permit any one to discuss it with you, either in your presence or in your hearing, and anyone that violates or attempts to violate that rule, I will expect you to call it to my attention. Court will be in recess for about en minutes.

(After recess Mr. Bryant was back on the stand.)

The Court:

I believe you had concluded your direct examination, did you not, Mr. District Attorney?

Mr. Davis:

I have a few more questions. I want to ask him.

Q. Mr. Bryant, what was the condition of the 1948 Chevrolet when you sold it to Mr. Herman Roberson?

Mr. Fuller:

I object.

The Court:
Overruled.

A. Mechanically, you mean?
Q. Yes, sir.
A. To my knowledge it was an average, maybe above an average car.
Q. Both ways as to motor and cleanliness?
A. Yes, sir.
Q. What was the condition of the 1949 or 1950, you testified about, the Oldsmobile that you received from Dr. Melvin?

Mr. Fuller:
I object.

The Court:
There was an objection to the car he received from the Doctor.

Mr. Davis:
What was the condition of the 1950 Oldsmobile that you sold to Herman Roberson, at the time you sold it to him?
A. It was a clean car.
Q. How was the motor?
A. It was okay.
Q. What was the condition of the 1951 Cadillac automobile which you sold to Herman Roberson, at the time you sold it to him?
A. To my knowledge it was good. There was some small mechanical defect, it did not have any speed, it was lazy, but I think that was due maybe to the fault of the points.

Q. How about the cleanliness of the body and the condition of the paint job?

A. It was nice.

Mr. Davis:

All right. You may have the witness.

The Court:

Cross examine.

Mr. Fuller:

Mr. Bryant, the last time that you testified in this Court room, were you then a United States prisoner?

A. I was.

Q. Where were you confined at the time you testified in the last trial of this case?

A. In Atlanta, Georgia, is where I was serving my time.

Q. In what institution over there?

A. Well, I had recently been taken out to the farm, too. I had previously been in the Federal Penitentiary.

Q. Were you a Federal prisoner at the time you testified in this Court room?

A. I was.

Q. Approximately how long did you remain confined after your testimony on the first trial of this case, Mr. Bryant?

A. Until July 26. I believe it was in February.

Q. I will ask you if you had any understanding with the United States Attorney's office in this Court that they would recommend you for a release from the Federal prison, in the event you gave testimony that would convict Herman Roberson?

A. No, I did not.

Q You had no understanding to that effect?

A. No, sir.

Q. Did you have any understanding that it would not help your chances for being released, if you did give favorable testimony to the Government's case?

A. There was no understanding.

Q. Now, I will ask you to state whether or not you know that the District Attorney, Mr. Hartwell Davis, of this Court, did recommend you for a release from custody in Atlanta following your testimony on the first trial?

A. I did not know it.

Q. I ask you to state whether or not you know that the District Attorney, Mr. Hartwell Davis, of this Court, did recommend you for a release from custody in Atlanta in your testimony in the first trial?

A. I did not know it.

Q. You don't know whether or not Mr. Davis did recommend you or not, do you?

A. No, sir.

Q. I will ask you—

Mr. Davis:

We object. I just want to say, it is not a fact.

The Court:

Overrule your objection.

Mr. Fuller:

I will ask you to state again whether or not you were released following your testimony on the first trial of this case. You are not now in custody, are you?

A. No.

Q. You were released, when?

A. July 26, last year, 1956.

Q. And the testimony you gave was in the month of February, 1956, was it not?

A. That is right.

Q. Did your sentence expire in July, or were you released?

A. It did not expire in July. I was released shortly. I did my full time, less my good time, in this institution.

Q. Now, how much time did you have when you testified in this Court. How many years did you get?

A. I got three and one-half years.

Q. And where did you get the three and one-half year sentence?

A. In Birmingham.

Q. When?

A. In 1953.

Q. Do you remember the month?

A. December 10, 1953.

Q. And you were sentenced to three and one-half years federal confinement?

A. That is right.

Q. And you served about 20 days in 1953, and you served all of 1954, and all of 1955, is that correct?

A. Yes, and until July, 1956. Well, I actually began my time in June of 1953. I did about six months jail time.

Q. You didn't begin your time until June of 1953, did you?

A. Actually I didn't begin the sentence until the 10th day December 10, 1953.

Q. And then it was actually how much?

A. One two-year sentence and one eighteen months sentence.

Q. That would have been three and one-half years which you had, and you began in June of 53, instead of in December, didn't you?

A. No, sir, counting the six months in jail, I had four years all together. I got three and one-half years and did not get my six months jail sentence.

Q. When you were released, were you released on parole, or were you given an outright release?

A. I was released on a conditional release.

Q. On condition, did you report to a probation officer?

A. Yes, I did.

Q. How long did you report to the probation officer?

A. Until December 11.

Q. Then on December 11th, was when your sentence expired?

A. That is right, less the six months. I had about eleven months good time. And you don't have to build six months of that 180 days that you don't have to build on a conditional release. All over 180 days you do have to build conditional release, all over, you do.

Q. And from July of 1956, until December of 1956, your sentence was actually still running, wasn't it?

A. That is right.

Q. But you were not confined?

A. That is right.

Q. Now, Mr. Bryant, you are a married man, aren't you?

A. That is true.

Q. And Miss Yarnell is not your wife?

A. She is not.

Q. You and Miss Yarnell were living together, traveling about the country as man and wife, were you not?

A. That is true.

Q. Was Miss Yarnell also sentenced to the pententiary?

A. She was.

Q. How long a sentence did she get?

A. I can't say definitely. She received two eighteen month sentences and I don't recall whether they ran concurrently or consecutively.

Q. Now, what was it that you were sentenced for, Mr. Bryant?

A. The Dyer Act, transporting a stolen automobile.

Q. And how many automobiles have you actually stolen and transported?

A. Eleven or twelve.

Q. Now, I will ask you if you know Mr. Jack Hamel, and Mr. Hayden McBrayer?

A. I know the two of them, but I don't know which one is which.

Q. But you do know the two men?

A. Yes, sir.

Q. Now, did you see those two men when you went up to the used car lot there, the two times you said you went, once with a Chevrolet and once with the Oldsmobile; did you see Mr. McBrayer or Mr. Hamel, or both?

A. Yes, sir.

Q. You did see both of them?

A. Yes, sir.

Q. Did you have a conversation with Mr. McBrayer and Mr. Hamel, or one, or both of them?

A. I talked with them both, more with the more husky one. I talked with him more than with the other.

Q. I will ask you what name was on the sign on the used car lot where you disposed of the Chevrolet automobile and the Oldsmobile, what sign was up there?

A. Hamel and McBrayer.

Q. In your conversation there with Mr. Hamel and Mr. McBrayer, did they explain to you who was operating the lot or who was not operating the lot?

A. I believe Mr. Roberson went in, and explained the set-up there.

Q. Will you tell to your best recollection what was said about it at that time?

A. That Mr. Roberson had leased the lot to someone.

The Court:

Who is it making the statement?

A. Mr. Roberson; that he had leased it to someone who in turn had leased it to Mr. Hamel and McBrayer, and they at the time were running it, and he put a few cars on the lot, and sold a few cars from there. Actually the cars in the lot, most of them belonged to a man named McBrayer, that was my understanding.

Q. Now, when you got ready to leave the lot of McBrayer and Hamel, who did you leave there with, on the first occasion, when you left the Chevrolet, do you recall who you left there with?

A. I can't be positive of that.

Q. To refresh your recollection, let me ask you if you didn't leave with Mr. Jack Hamel or Mr. Hayden McBrayer? Or both and Miss Yarnell?

A. I left with Miss Yarnell and on the two occasions I was driven downtown, once to the hotel

and once to the train, on one occasion the stocky one drove me.

Q. Mr. McBrayer or Mr. Hamel?

A. Possibly both.

Q. Now, Miss Yarnell, was in the car, too, wasn't she?

A. She was.

Q. Let me ask you if you came back to Montgomery at a later date, after the Chevrolet had been disposed of, did you come back at a later date?

A. I did.

Q. About when was that, with reference to Mr. McBrayer and Mr. Hamel?

A. You mean when I saw them?

Q. Yes, when was that?

A. I can't say, sir. It was not a long time, I can't say as to a matter of weeks or days.

Q. Well, after these two times, when the transactions were completed, you did come back to Montgomery and go to the McBrayer-Hamel used car lot, did you not?

A. I did.

Q. I will ask you if the McBrayer-Hamel used car lot was in the same location when you came back to Montgomery, as it was when you came the first time?

A. It was not.

Q. Where had they moved to, in your best judgment, or, if you know the name of the street?

A. It was moved further out the same street, I mean on the opposite side.

Q. What time of the day or night was it, when you arrived at the McBrayer-Hamel used car lot, on that occasion?

A. I could not say what time, it was real early in the morning.

Q. It was shortly after daylight, was the lot open or closed at that time?

A. It was closed.

Q. Along about daylight, did somebody come to the car and wake you up?

A. Not about daylight.

Q. Well, after daylight, do you remember somebody waking you up on that occasion?

A. I recall someone coming in about time for the lot to open, it was quite a while after daylight.

Q Do you remember who that person was, did he seem to be a night watchman?

Mr. Davis:

We object.

Mr. Fuller:

Well, did he have the appearance of having some business about the place, did he do anything?

A. I didn't have the least idea who he was.

Q. Would you know, if that was a man named Goodson or not?

A. I never heard his name.

Q. Well, your testimony is that somebody did come to the car, is it not?

A. Somebody did come to the car.

Q. What did he do then, if anything?

A. I don't recall.

Q. Did he shake you and wake you up?

A. No, sir.

Q. You were awake?

A. I can't say I was not dozing. I was not asleep, I had driven all night.

Q. You say you were dozing?

A. I can't say that I was not dozing. I am a light sleeper.

Q. What had you done the night before?

A. I had driven all night.

Q. Had you stolen another automobile, Mr. Bryant?

A. I had.

Q. Where did you steal that one?

A. In Nashville, Tennessee, I believe it was.

Q. Did you bring it to the McBrayer-Hamel used car lot after it had moved from Mr. Roberson's lot. Is that the one you are talking about?

A. That is the one I was thinking about.

Q. Did another man come with you, when you came back that time?

A. Yes.

Q. A man named Sanchez?

A. A man named Sanchez, yes.

Q. What arrangements did you make with Mr. McBrayer and Hamel, I believe you had the stolen car, you all were riding in it, weren't you?

A. We were.

Q. You parked it there on the McBrayer-Hamel lot by the office, did you?

A. It is the one we were sitting in.

Q. Now, what, if anything, did Mr. McBrayer or Mr. Hamel, or both of them do, with respect to the car. What kind of a car was it?

A. A Chevrolet, I believe a 51 or 52, I believe.

Q. What, if anything, did Mr. McBrayer and Mr. Hamel do with that car?

A. After they came to the lot?

Q. Yes, sir. What did they do?

A. I got a notarized—I got one of them, the more slim of the pair, to notarize a bill of sale between Sanchez and myself. One was selling it to the other.

Q. Do you remember who sold the car to whom?

A. No, sir. I don't.

Q. Well, you all were selling the stolen car, one of you bought it and one of you sold it, is that right?

A. In other words, we needed a bill of sale.

Q. Now, to refresh your recollection, about who sold the car to whom, let me ask you if you didn't on the other trial, testify that when you were on that lot, when Mr. McBrayer or Mr. Hamel one got there, that you didn't say, that you gave your name as Randle, and got Mr. McBrayer or Mr. Hamel one to notarize it, is that correct?

A. I don't recall.

Q. Let me read it to you, if I can find it. "What name did you get the title under?" Was the question on Page 37, at the bottom. I will ask you if you didn't answer: "I don't recall, but not my own name."

A. I don't remember the answer, but I don't recall.

Q. The next question was: "Who bought the tag?" And I will ask you if you didn't answer: "The boy with me, Sanchez?"

A. He did buy the tag.

Q. Did he buy it in his name?

A. No, sir.

Q. Do you know whose name he used?

A. I don't know.

Q. Well, it was Mr. McBrayer, or Mr. Hamel one, who handled that sale, wasn't it?

A. They notarized a bill of sale.

Q. Where is that particular car now, Mr. Bryant? If you know?

A. I haven't the least idea.

Q. That has never been found, has it?

A. I don't know, sir.

Q. Do you remember, or did you hear Mr. McBrayer or Mr. Hamel's testimony to the effect in the last trial that what they did for you there that day was in the afternoon, and not in the morning.

Mr. Davis:
I object to that, because he couldn't have heard that trial, because he was in the witness room.

The Court:
Sustained. The witness was under the rule. I believe, if I am in error I expect counsel to, at this time, correct it as to the last trial.

Mr. Fuller:
I will ask you, Mr. Bryant, if Mr. McBrayer, or Mr. Hamel one, testified on the last trial that the paper that they notarized for you was to get a driver's license, was that true?

Mr. Davis:
I object.

The Court:
The question as I understand it is, if they did testify to that, was that correct?
A. No, sir.

The Court:
Overruled.

A. I did not hear any of the testimony, I was locked up.

Mr. Fuller:
I am not asking you if you heard it. I am asking you if they notarized a bill of sale for you, it that true or not true, to your own knowledge?

A. I don't know.

Q. Now, Mr. Bryant, have you ever been convicted or anything else other than these automobile charges?

A. When I was about fifteen, yes.

Q. When you were fifteen years old. How old are you now?

A. Twenty eight.

Q. What were you convicted of, when you were fifteen years of age?

A. Grand larceny.

Q. Is that the only other conviction you have had besides this last federal conviction?

A. It was.

Q. Mr. Bryant, you were actually an automobile dealer in San Antonio, Texas, at the time that you came to Montgomery with the 1948 Chevrolet automobile, were you not?

A. That could be answered both ways, sir.

Q. To refresh your recollection, on your last trial didn't you testify that you were not licensed but that you were making legitimate sales of automobiles in San Antonio, Texas?

A. That is true.

Q. Now, this Oldsmobile car that you brought here to Montgomery, was it a one-seated or a two-seated automobile?

A. It was two-seated.

Q. It had two doors, one on each side, and had a seat in the back, is that correct?

A. That is correct.

Q. Is that what is referred to as a "Club Coupe?"

A. That is true.

Q. Now, you said when you got the car in San Antonio, Texas, that you went to the lot and obtained

the car by permission, did you not, to use it to make a trip?

A. I believe that question was on the Oldsmobile, was it not?

Q. It was on the Chevrolet?

A. Yes, sir.

Q. You obtained permission from the car lot to use the car?

A. I did.

Q. And when you got to Jackson, Mississippi, you obtained permission form the Doctor, who testified, to use his car?

A. I did.

Q. Now, when you signed the bill of sale, on the Cadillac automobile, will you tell us whether or not the bill of sale was filled out, or was it not?

A. I don't recall.

Q. You won't say whether it was or not?

A. No, sir.

Q. Do you know whether or not the correct motor number on your Cadillac automobile was used in the bill of sale?

A. I don't know.

Q. I will ask you if you know whether or not the bill of sale that the Oldsmobile and the Chevrolet was sold on from the McBrayer-Hamel Motor Company, if you know whether or not they were sold in the name of McBrayer and Hamel, when they were sold, do you know?

A. I do not know, sir.

Q. Do you know whether or not the Cadillac automobile when it was sold was sold in the name of Bill Rhodes, as the owner?

A. I don't know.

That is all, Your Honor.

The Court:
Any re-direct?

Mr. Davis:
Yes, sir. Mr. Bryant, I will ask you to look at the purported bill of sale, in the name of J. L. Newman, Birmingham, Alabama, RFD No. 1, Phone 5242, down in the lower right hand corner. The word Newman being opposite the letters L. S. Look at that please. Did you or did you not write the name J. L. Newman down there in the lower right hand corner of that purported bill of sale?

A. It looks like my handwriting.
Q. Is that your best recollection?
A. It is.
Q. Did you or did you not hand this paper to Mr. Herman Roberson?

Mr. Fuller:
I object to that.

The Court:
I sustain it. It does not show time and place, and whether or not it concerns the automobile we are interested in.

Mr. Davis:
Yes, sir.

Mr. Fuller:
I object. He keeps saying this paper—

The Court:
Let it be marked Government's Exhibit No. 1 for identification.

Mr. Davis:

Look at Government's Exhibit No. 1, did you on or about June 8th or along therein, give this Government's Exhibit No. 1 to Herman Roberson in relation to the 1951 Cadillac automobile, which you testified here about selling to him, that you said you took in Tulsa, Oklahoma?

Mr. Fuller:

I object.

The Court:

I sustain the objection, too long and complex.

Mr. Davis:

All right. Did you hand this Government's Exhibit No. 1, to Herman Roberson in Montgomery, Alabama, in connection with the sale to him of that Cadillac automobile?

A. I did.

Mr. Fuller:

I object.

The Court:

Overruled.

A. You mean from hand to hand, did I hand it to him? I couldn't say.

Q. Tell us, what, if anything, was done between you and Herman Roberson, as to this bill of sale?

A. I signed the bill of sale for Herman Roberson.

Q. That was for the Cadillac?

A. Yes, sir.

Q. Do you recall whether the interlineation here in blue ink, dark blue ink, at the time you signed it, here in the lower right hand corner, in light blue ink.

Mr. Fuller:

I object, the witness has testified he did not remember whether or not the bill of sale was filled out or was not. That he would not say.

The Court:

You are referring to Government's Exhibit No. 1, are you?

Mr. Fuller:

Yes, sir, that is the same document that I asked him about awhile ago.

The Court:

Did you show it to him?

Mr. Fuller:

The Government had it, I did not.

The Court:

Overrule your objection.

Mr. Varner:

We object to his statement that the Government had it. It was in Court.

The Court:

Just a moment, Gentlemen, I am not going to make this admonishment any more, you conduct your trial in an orderly manner. The document is equally avail-

able to either counsel, I understand it is in the hands of the Clerk, is that correct, Mr. Clerk?

A. Yes, sir.

The Court:

Let's proceed.

Mr. Davis:

We offer this then in evidence, as Government's Exhibit No. 1.

The Court:

Any objection.

Mr. Fuller:

No objection.

The Court:

It will be admitted.

Mr. Davis:

Was the Oldsmobile that you sold Herman Roberson in March, the same Oldsmobile that you had obtained from Dr. J. C. Melvin, in Jackson, Miss., or not?

A. It was.

Mr. Fuller:

I ask that the answer be excluded.

The Court:

What is the basis of your objection?

Mr. Fuller:

The question was "Was the Oldsmobile that he stole from Dr. Melvin the same automobile he sold Herman Roberson." That was my understanding of it.

The Court:

(Explains.) Is that the way you understood the question?

A. That is the way I understood it

The Court:

Overruled.

Mr. Davis:

That is all.

Re-Cross.

Mr. Fuller:

Q. Mr. Bryant, would you read this bill of sale, the document that has been identified as Govt's Ex. No. 1, would you read that to the jury, please, sir.

A. "State of Alabama, County and such. Bill of sale: "Know all men by these presents that—this is filled out, in consideration of $2500.00 to Bill Rhodes, the receipt whereof is hereby acknowledged, to bargain, sell, and deliver to the same, the following goods and chattels, to wit: 1951-60 Special-Cadillac. Motor Number 516095134. Witness my hand and seal this 8th day of June, 1953. Executed in the presence of notary public of Montgomery, Doris C. Roberson, Signed J. L. Newman, Montgomery, Alabama R.F.D. No. 1, Phone 5242. There is another phone 65013.

Q. Now, Mr. Bryant, do you know whether or not that motor number that you have just read from Government's Exhibit No. 1, is or is not the correct motor number for this Cadillac Automobile?

A. I do not.

Q. You don't know?

A. No, sir.

Mr. Fuller:
Your witness.

The Court:
Anything further?

The Court:
I want to ask the witness a question. Do you know Bill Rhodes?

A. I met him one time.
Q. Did you meet him prior to the time you executed this bill of sale?
A. I did not. Do you mean days before or the same day?

The Court:
Any time prior to the time you signed it.

A. I believe the night before I sold him the next day, is the time I did meet him.
Q. Did you ever have any discussion with Bill Rhodes regarding the sale of this 1951 Cadillac to him?
A. Not to my recollection, no, sir.
Q. Do you have any recollection as to whether or not the sum of $2500.00 was filled in on this bill of sale at the time you signed it as J. L. Newman?
A. I do not.
Q. How much do you say you obtained for that Cadillac automobile?
A. $300.00.
Q. In money?
A. Yes, sir.
Q. Now, I want to go back, to make sure I understand your testimony, to the transaction you said you

had with Mr. Herman Roberson concerning the Chevrolet in March of 1953, or the early part, I believe you stated it. Did you have any conversation with Mr. Roberson prior to the time you say you sold that car to him, regarding the title of that automobile?

A. That is the 48 Chevrolet?

The Court:

Yes, sir.

A. No, sir.

Q. All right. Did you have any conversation with Mr. Roberson prior to the time you say you sold that automobile to him, regarding where you obtained that automobile?

A. Only at the time I sold it to him, sir. I told him that I had been fooling with some used cars in Texas, and that I had just driven it over. Texas being a title state and Alabama being a non-title state; I did not have a title for it, and could not sell it there.

Q. Was anything said in that conversation between you and Mr. Roberson, regarding that 1948 Chevrolet automobile, that it had been stolen by you?

A. No, sir.

Q. All right, now. Lets go into the 1950 Oldsmobile, that you say you obtained from Dr. Melvin, in Jackson, Miss., prior to the time you say you sold that automobile to Mr. Roberson, did you have any conversation with Mr. Roberson regarding the title to that car?

A. No, sir.

The Court:

Prior to the time that you say you sold that automobile, that is the Oldsmobile, to Mr. Roberson, did you have any conversation with Mr. Roberson regarding where you obtained that automobile?

A. To the best of my recollection I said I got it in Jackson, Miss., I couldn't be positive about that.

Q. Did you, prior to the time you transferred that 1950 Oldsmobile to Mr. Roberson, have any conversation with him to the effect that you had stolen that 1950 Oldsmobile?

A. Not to my recollection.

Q. All right. Now, lets go to the 1951 blue Cadillac —do you remember that transaction you have just testified about?

A. Yes, sir.

Q. Did you have any conversation with Mr. Herman Roberson, prior to the time you say you sold that automobile to him, regarding the title to that car?

A. No, sir. I don't think we discussed titles on any of them.

Q. Did you have any discussion with him regarding the 1951 Cadillac to the effect that you had stolen that automobile, prior to the time you say you transferred it to him?

A. I don't recall ever using those words.

The Court:

Well, anything to that substance and effect?

A. In so many words, I could not say that I ever did.

Q. All right, did you ever, now, you used the word stolen here, it may be that, and I ask you the same question with regard to the term, "Hot automobile," did you ever use that expression?

A. Not that I recall.

The Court:

Is there anything further?

Mr. Davis:

Mr. Bryant, Mr. Fuller I believe, asked you about your driving into Montgomery one night and parking at the McBrayer and Hamel lot after it had been moved?

A. Yes, sir.

Q. Was the automobile you were in at that time, a stolen automobile, or not?

A. It was.

Q. Where did you obtain it?

A. In Nashville, Tennessee, I believe.

Q. Did you or did you not, on that occasion, ask for Mr. Herman Roberson, at the McBrayer and Hamel lot, when they got there?

Mr. Fuller:

I object.

The Court:

Sustain the objection.

Mr. Davis:

Did you see Herman Roberson on that trip here?

A. I did.

Mr. Fuller:

I object.

The Court:

Overrule that.

Mr. Davis:

Did you have a conversation with him?

Mr. Fuller:
Object, that is not responsive.

The Court:
Sustained. I don't believe I will let you go any further on that, even if I did permit him to open it up. I don't think it is proper, Gentlemen.

Mr. Davis:
Your Honor understands why I did not go into it to begin with, it had not been opened at that time, but is in on rebuttal, I think that is entirely proper, Your Honor. I wouldn't have started into it but I think the jury should have the benefit of it.

The Court:
Well, was that prior to his selling Mr. Roberson these automobiles?

Mr. Davis:
It had to do with the sale to him of the last automobile.

The Court:
Subsequent to the sale of them?

Mr. Davis:
Yes, sir.

The Court:
I sustain the objection.

Mr. Davis:
That is all.

The Court:

I am going to recess, Gentlemen, at this time for lunch. I want to caution you again not to commence your deliberations, do not discuss this case, don't form any opinion of the guilt or innocence of Mr. Roberson, the defendant, in this case. Do not permit anyone to discuss this case with you, in your presence or in your hearing. Court will be in recess until 1:30.

Thereupon Court was adjourned for lunch, the first day.

The Court:

Call your first witness.

Mr. Davis:

Major Joye.

MAJOR KENNETH E. JOYE, being duly sworn, testified as follows:

Direct Examination.

Mr. Varner:

Q. What is your name, please?

A. I am Kenneth E. Joye.

Q. You are a Major in the United States Air Force?

A. Yes, sir.

Q. Where were you stationed, you are in the Pentagon in Washington, now?

A. Yes, sir.

Q. Where were you stationed in the summer of 1953?

A. At Maxwell Air Force Base in Alabama.

Q. Did you have occasion to have dealings with the Roberson Motor Company in Montgomery.

A. Yes, sir.

Mr. Fuller:

I object. The witness answered before I could say anything.

The Court:

Sustained. That answer will not be considered, Gentlemen.

Mr. Varner:

Do you know Herman Roberson?

A. Yes, sir.

Q. Did you have some dealings with him in the summer of 1953?

Mr. Fuller:

I object.

The Court:

Overruled.

A. Well, not with him personally.

Q. Well, did you have some dealings with an agent of his?

Mr. Fuller:

I object.

The Court:

Sustained.

Mr. Varner:
Well, with whom did you have dealings with, regarding a 1951 Cadillac, light blue in color?

Mr. Fuller:
Object.

The Court:
Overruled.

A. With a Mr. Neal.
Q. Is that Mr. Cameron Neal?
A. I don't know his first name.
Q. Do you know who he worked for at that time?
A. He worked at the Roberson Motor Company lot. A used car lot.
Q. Now, when was it that you had that transaction?
A. I believe it was in the latter part of July, 1953.
Q. Did you purchase an automobile from or through him?
A. I did purchase a 1951 Cadillac through him, yes, sir.

Mr. Fuller:
I object, Your Honor. The bill of sale is here, and— is the best evidence.

The Court:
Sustained.

Mr. Varner:
Will you look at that paper, that is not the bill of sale, we do not have the original. Can you make out enough of that paper to recognize it?

Mr. Fuller:
Your Honor, he should have it identified.

The Court:
That is absolutely correct. Let it be marked for the purpose of identification.

(Received and marked Plf. Ex. No. 2, for id.)

Mr. Varner:
Do you recognize this as a true photostat of anything?

A. I believe I do, yes, sir.
Q. Did you have the original of this paper marked Plaintiff's Exhibit No. 2, for identification, purporting to be a bill of sale from Bill Rhodes, to you for the blue Cadillac, Motor Number 516095134?
A. I believe that to be correct, yes, sir.
Q. Is that your best judgment?
A. Yes, sir.
Q. From whom did you get that bill of sale?
A. As I recall, I believe I received it from Mr. Neal.
Q. Is that your best judgment?
A. As I recall, yes, sir.

Mr. Varner:
I ask that it be introduced in evidence.

The Court:
It will be admitted.

Mr. Varner:
What did you pay for that automobile, Major Joye?

A. I paid $1800.00 cash and a 1949 Oldsmobile, I had.

Q. Do you remember what the purchase price on the car was?

A. As I recall it was in the neighborhood of $2900.00 or $2995.00 I don't recall the exact figure.

Q. And was that car subsequently claimed from you as a stolen automobile?

A. It was brought to my attention that the car was a stolen automobile, it never left my possession.

Q. Now, at the time you bought that car, how were the tires? Were the tires new or used, or what were they, at the time you bought it?

A. The tires were used.

Q. And how much tread did they have on them, to the best of your knowledge?

A. I couldn't say, I would think that—let's put it like this, I had the tires from my Oldsmobile changed and put on the Cadillac because they were better tires.

Q. Now, what was the condition of the car otherwise?

A. I would say it was in quite a good condition.

Q. Were there any spot-lights or any extra features about the automobile?

A. No, the normal equipment that would be found on a Cadillac, I would say.

Q. Would you recall what equipment was on that automobile?

A. Just a radio and heater, hydromatic, it was nothing that I recall as being particularly extra.

Q. Were there seat covers on the car?

A. No, there were no seat covers on the car.

Mr. Varner:
That is all.

The Court:
Cross examine.

Mr. Fuller:
Major Joye, have you ever had a bill of sale for this particular automobile from either Herman Roberson, or Roberson Motor Company?

A. I don't believe that any of the bills of sale that I have specifically was from Roberson Motor Company, as such, they were from Bill Rhodes.

Q. Do you recall whether on the last trial of this case, you stated as a positive fact that you never at any time received a bill of sale, either from Mr. Herman Roberson, or from Roberson Motor Company to this automobile that you have been testifying about?

A. The only bill of sale I ever received was from Mr. Neal, who was working, as I understand, for Mr. Roberson, at the Roberson Motor Company.

Q. The question I asked, if you will please answer it, I will ask you, if you did not testify positively that you never at any time received any bill of sale from Roberson Motor Company, or Herman Roberson to the automobile that you have been testifying about? Did you or did you not testify, without any equivocation about it, that you never at any time received a bill of sale from either Herman Roberson, or from Roberson Motor Company?

A. As I understand your question, I feel sure that I could have testified to that on the last trial, because I would so testify now.

Q. You would so testify to what?

A. That I never did receive a bill of sale from Mr. Roberson, or from Roberson Motor Company, or one that indicated a sale from Roberson Motor Company as the owner of the car.

Q. Your testimony now is, and was on the other trial, that you never at any time received any bill of sale from Herman Roberson, or from Roberson Motor Company, that is correct, isn't it?

A. Not as owner of the car, no, sir.

Q. Now, I will ask you when the insurance company adjusted that matter and made a settlement of the matter, if to your knowledge that settlement was made in the name of Bill Rhodes?

Mr. Varner:

I object, he could not know.

The Court:

Ask him of his own personal knowledge, if he knows. Overrule your objection.

Mr. Fuller:

Do you know Major?

A. From my own personal knowledge I do not know. I am only speaking because I was not at the settlement. I am not sure how to answer the question.

Mr. Fuller:

I will ask you the question this way. I will ask you if through the insurance company, you did receive a subsequent bill of sale issued in the name of Bill Rhodes?

A. A carbon copy of such bill of sale, yes, sir. I did receive from the Insurance Company, at my request.

Q. And did the carbon copy of that second bill of sale, which you received from the Insurance Company did it have any notation on it, if you know at to Roberson Motor Company, in any shape, form, or fashion?

Mr. Varner:

I object. I think the carbon copy speaks for itself, and is the best evidence.

The Court:

I take it you are going to introduce it in evidence.

Mr. Fuller:

I would like to have this carbon copy, this document that I have in my hand, identified as the Defendant's Exhibit No. 1.

(Received and marked Defendant's Exhibit No. 1.)

Mr. Fuller:

I hand you this document that has just been identified as Defendant's Exhibit No. 1, and ask you to look at it and see if you know what it is.

A. That appears to be a bill of sale from the Truck Insurance Exchange to Bill Rhodes, for a 1951 Cadillac automobile, including a receipt from Bill Rhodes of the car from the Truck Insurance Exchange, dated 9 December, 1953.

Mr. Fuller:
Your Honor, we now offer in evidence the document that has been marked Defendant's Exhibit No. 1.

The Court:
Any objections?

A. No, sir.

The Court:
It will be admitted.

(Received in evidence and marked Deft's Ex. No. 1.)

Mr. Varner:
Did you look at the engine at the time you bought that car?
A. Yes, I looked at the engine, after I bought it, actually.
Q. Now, how long after you bought it?
A. A matter of days.
Q. Did it have a new engine in it, when you bought it or not?
A. No, sir. It didn't appear to me to be a new one.

Mr. Varner:
That is all.

The Court:
Any further cross examination?

Mr. Fuller:
That is all.

JACK INGRAM, being called as a witness, being duly sworn, testified as follows:

Direct Examination.

Mr. Davis:

Q. What is your name?

A. Jack Ingram.

Q. What is your business?

A. I am an automobile salesman.

Q. In the course of your business, do you sell and appraise automobiles?

A. Yes, sir.

Q. How long have you been in this business?

A. Since August of 1949.

Q. Who are you with, at present?

A. Al Means.

Q. What kind of auto dealer is he?

A. Ford.

Q. Here in Montgomery?

A. Yes, sir.

Q. Mr. Ingram, how long have you been with the Ford dealer here in Montgomery?

A. Since August of 1949, except for about six months.

Q. Were you in the new car business, or the used car business since that time?

A. Used car business.

Q. Mr. Ingram, have you bought and sold and appraised a few or many automobiles, during the period from 1949 down to the present date?

A. Yes, sir, I have a few.

Q. Have you been doing a few every month, or how many have you been handling, buying and appraising every month, approximately?

A. I would say about 2,000 for the past nine years.
Q. Had you had this experience in 1953, part of it?
A. Yes, sir.
Q. And in relation to March of 1953, Mr. Ingram, please consider the facts I wish to give you, and then tell me what a car was worth in March of 1953. That being a 1948 Chevrolet, four-door, sedan automobile, the body and motor of which are in average condition, as of March, 1953, what in your opinion would be a fair wholesale value of that car as at that time, if you know?

Mr. Fuller:
I object.

The Court:
Overrule the objection.

Mr. Davis:
Answer?

A. I would say a nice 48 Chevrolet, four-door, sedan, would be five years old at that time, would be worth I would say about five and a half or six.
Q. That is wholesale?
A. Yes, sir.
Q. Now, just what do you mean?
A. $550.00 or $600.00.
Q. Now, lets say at the same time, about March, 1953, a 1950 model single seated, two-door, business coupe, Oldsmobile, 88, what would that be worth at that time?

Mr. Fuller:
I object.

The Court:
I sustain the objection to what it would be worth.

Mr. Davis:
In your opinion, what would be the wholesale value of that car, at that time, if it were in good condition?

The Court:
I sustained it, Mr. District Attorney, I will let you ask him what the fair, reasonable cash wholesale value of it was, in 1953, if you phrase it like that, if you don't I will sustain the objection.

Mr. Davis:
What was the fair, reasonable, wholesale value, cash value for that car at that time in your opinion, if you know?

Mr. Fuller:
I object.

The Court:
Overruled.

A. $750.00.

Mr. Davis:
Now, lets push over to June 8, 1953, and the car to consider now, some three months later, is a 1951 model, Cadillac, four-door, sedan automobile, clean, motor running slightly lazy, 60 series. What in your opinion, would be the fair and reasonable wholesale cash value of that car, at that time?

Mr. Fuller:
I object.

The Court:
Overruled.

A. I would say $2800.00.

Mr. Davis:
All right. Ycu may have the witness.

The Court:
Cross examine.

Mr. Fuller:
Mr. Ingram, how many automobiles have you ever bought without seeing them?

Mr. Davis:
We object.

The Court:
I will overrule that.

A. I wouldn't know how many I have bought without seeing them.

Mr. Fuller:
That is all.

VERNITA YARNELL PHILYAW, being called as a witness, being duly sworn, testified as follows:

Direct Examination.

Mr. Davis:

Q. What is your name, please, mam?

A. Vernita Philyaw.

Q. You were formerly Vernita Yarnell, and you have married since then, is that right?

A. Yes, sir.

Q. And you are now Mrs. P. Philyaw?

A. Yes, sir.

Q. Mrs. Philyaw, do you know Hollis Bryant?

A. Yes, sir.

Q. Did you know him in 1953 and prior to that time?

A. Yes, sir.

Q. Were you living with Hollis Bryant in January and February and March, up until June of 1953?

A. Yes, sir.

Q. What were you two doing together to earn a living?

A. Taking cars and selling them.

Q. Mrs. Philyaw, did you two, did you ride with Hollis Bryant in an automobile from San Antonio, Texas, to Montgomery, Alabama?

A. Yes, sir.

Q. Do you remember when it was?

A. I won't say because I don't remember right off-hand.

Q. Well, to refresh your recollection, was it in February, or early March, of 1953?

A. It was in 1953, but I don't remember the date.

Q. Was it in the spring of 1953?

A. The best I can remember, it was somewhere along there.

Q. What kind of an automobile was it?

A. A Chevrolet.

Q. How many doors did it have on it?

A. I don't remember now, off-hand.

Q. What did you do with that, you testified it was from Texas that you came, did you not. Whereabouts in Texas, did you come from to Montgomery, and on that occasion?

A. The best I can remember it was San Antonio, Texas.

Q. What did you do with that car when you got here to Montgomery?

A. We went to Mr. Roberson's used car lot.

Q. Do you see him here in this Court room?

A. Yes, sir. Over there in the brown suit.

Q. Did you see him on that occasion?

A. Yes, sir.

Q. Did you do anything with that car as far as he was concerned?

A. We left the car with him. We sold it to him.

Mr. Fuller:

Your Honor, we object unless she specifically knows what was done with that automobile, then we object. And ask the jury not to consider that.

The Court:

I sustain that objection. Not the statement that they left the car with him. I am not excluding that, Gentlemen, but at this time, the statement that they sold it to him. I will let you go into whether or not there was any money or whatever conversation she

heard relative to the transfer of that automobile, but at this time, I sustain that objection.

Mr. Davis:

Did you go to the lot with Mr. Bryant?

A. Yes, sir. I did.

Q. How did you go to the lot?

A. In the car.

Q. Did you, or did you not, see Mr. Bryant talking to Mr. Roberson, on that occasion.

A. Yes, sir. I did.

Q. Did you overhear anything they had to say to one another?

A. I do remember this much of it.

Mr. Fuller:

We object, the answer is not responsive.

The Court:

Just answer yes, or no, did you overhear any portion of the conversation between Bryant and Roberson, in connection with the transaction involving this automobile?

A. Yes, sir.

The Court:

You say yes, all right.

Mr. Davis:

Now will you tell us what you overheard between those two at that time, while you were there with this Chevrolet, with Hollis Bryant in it?

A. Will you repeat that.

Mr. Davis:

Tell us what you heard said, between those two at that time?

A. Mr. Roberson told Hollis to go into the office with him, that he did not want anyone to see him pay for the car, so that anyone could not say anything about seeing him pay the money.

Q. All right. Did Hollis have any money when he got to Montgomery?

A. No, sir.

Q. Did he have any money when he left that lot?

A. Yes, sir.

Q. How do you know that?

A. He had either $300.00 or $350.00.

Q. How do you know that he had that?

A. Because he handed me some of the money.

Q. He did, did you see it all?

A. No, he told me how much he had—

Mr. Fuller:

I object.

The Court:

I sustain the objection.

Mr. Fuller:

And ask the jury not to consider that.

The Court:

That will be excluded, Gentlemen, that answer relative to what Bryant told her he had.

Mr. Davis:

We would like to explain to them that it is still in evidence that he handed her some of the money.

The Court:

I am not excluding the statement that Bryant did hand her some of the money, I am just excluding that portion of her statement that he said how much he had left after he handed her some of it.

Mr. Davis:

How much did he hand you, Mrs. Philyaw?

A. I am not exact about the figure of that.

Q. To the best of your recollection?

A. It was somewhere within the category of $200.00.

Q. Did you hear anything said by Mr. Roberson to Mr. Bryant, on that occasion about a Cadillac? Just answer yes, or no.

A. Yes, sir, I did.

Q. What did you hear said on that occasion by Mr. Roberson to Mr. Bryant about a Cadillac?

A. Mr. Roberson asked Hollis if he could find him a clean 49 or 50 model Cadillac, that he would like to have it.

Q. Did he say anything else following that?

Mr. Fuller:

I object.

The Court:

Overruled.

Mr. Davis:

Did Mr. Herman Roberson say anything else following that?

A. Yes, sir, he said he didn't want us to remember him if we were ever picked up in any way, we didn't know him.

Q. Now, did you leave Montgomery, then, did you proceed to Jackson, Mississippi?

A. Yes, sir.

Q. Who was with you?

A. Hollis Bryant.

Q. Along about the middle of March were you living in Jackson, Mississippi, March of 1953, were you living in Jackson, Miss., with Hollis Bryant?

A. Yes, sir.

Q. Mrs. Philyaw, when you were living there with Hollis Bryant, at that time, did you have an automobile?

A. We didn't when we went there, but he bought an Oldsmobile from a Doctor down there.

Q. Did he have an Oldsmobile automobile?

A. Yes, sir, he did.

Q. Did you go with him to get it?

A. No, I was at the apartment, he came by.

Q. He came by to pick you up?

A. Yes, sir.

Q. Don't tell us what you don't know, Just tell us what you heard said yourself by Bryant and by Roberson but don't tell about things otherwise, if you don't know. Now, he came by and picked you up in an Oldsmobile?

A. Yes, sir.

Q. Did you stay in Jackson, any, after he came by to pick you up, or did you leave Jackson?

A. I left Jackson.

Q. With whom?

A. Hollis Bryant.

Q. How did you travel?

A. In a green Oldsmobile.

Q. How do you describe that car, was it a roadster or runabout, or did it have a rumble seat, or what did you call it. What kind of a car, how do you describe it.

A. I am not that familiar with cars.

Q. Did you ever hear that called, that type of car?

A. I might have, but I don't remember it now.

Q. Did you come to Montgomery in that car?

A. Yes, sir.

Q. When you got to Montgomery, tell me what was the condition of the car. I don't mean the motor, you are not a mechanic, but what was the condition inside the car and the paint job on the car? If you know?

A. It was a dark green car.

Q. Well was the paint off of it, or not?

A. It was what I would consider in good shape, there was no paint missing, as I remember, the upholstery was in very nice shape.

Q. Did it have seat covers on it?

A. No, sir. I don't think it did.

Q. Is it what you call a fairly dirty car, or what you would call a clean car?

Mr. Fuller:

I object.

The Court:

I sustain that.

Mr. Davis:

All right, did you see any dirt on the car on the interior?

A. I couldn't say it was what you would call a dirty car, no, sir.

Q. All right. Now when you got to Montgomery, where did you take the automobile?

Mr. Fuller:
I object, unless she took it, Your Honor.

The Court:
I sustain that, ask her if she knows where it was taken.

Mr. Davis:
Where did you take that automobile, if you know where it was taken?

Mr. Fuller:
We object.

The Court:
Sustain that.

Mr. Davis:
Where was the car taken to, if you know?
A. To Mr. Roberson's used car lot.
Q. Who was driving that car?
A. Hollis Bryant.
Q. Were you in the car, or not?
A. Yes, sir. I was in the car.
Q. When you got to the used car lot, did you see any one there, that you knew?
A. I saw Mr. Roberson there.
Q. Was he the same man you had seen with the Chevrolet?
A. Yes, sir.
Q. Was the Chevrolet transaction or the Oldsmobile transaction first?
A. The Chevrolet.
Q. Now, did Hollis Bryant talk to anyone there, where you could see him?

A. None other than Mr. Roberson.

Q. Did he talk to Mr. Roberson?

A. Yes, sir. I saw him talking to him on the car lot but I don't know the conversation.

Q. Did you see any money change hands?

A. No, sir.

Q. Did Hollis Bryant have any money when he got to Montgomery, do you know?

A. No, sir.

Q. Did you leave the car at the lot, or did you take it to go away in?

A. We left it on the used car lot.

Q. Did Hollis Bryant have any money when he left the used car lot, if you know?

A. Yes, sir.

Q. How do you know?

A. Well, he had money when he left because when we went there, we didn't even have any to buy food with and when we left we went to the train and got on a train and left out.

Q. Did you see any of the money?

A. Yes, I would say I did.

Q. Did you receive any of it?

A. Yes, sir.

Q. How much?

A. I don't remember off-hand, he always gives me around $200, or $250.00 depending on how much he got.

Q. I see. Did you get a substantial sum of money when you left there, or not?

A. I wouldn't say.

Q. Was it in the neighborhood of what you just said, $200.00 or $250.00?

A. No, sir. I think it was more than that. I am not sure.

Q. You think it was more than that, $200.00?

A. Yes, sir.

Q. Now, were you living in Tulsa, Oklahoma, with Hollis Bryant in June of 1953?

A. Yes, sir.

Q. Did you see him at that time, and did you have an automobile in early June of 1953, in Tulsa, Oklahoma, you and Hollis Bryant, did you have a Cadillac automobile?

A. Yes, sir.

Q. Did you see one there at that time?

A. We didn't have it when we went there but we had one there after we got there for a while.

Q. Do you remember seeing it?

A. Yes, sir.

Q. Did you come to Montgomery in that Cadillac automobile?

A. No, sir. I was never in it in my life.

Q. You were never in it?

A. No, sir.

Q. How did you happen to see it?

A. They had the car out in the garage and they could not get the garage door to, and they were changing the license plates on the car.

Mr. Fuller:

We object.

The Court:

Sustained. We don't know who "they" were.

Mr. Davis:

Who is "they?"

A. Hollis Bryant and Chez, Sanchez.

Q. I see. And did you see them changing the license plates on that car, at your place in Tulsa, Oklahoma?

A. Yes, sir.

Mr. Fuller:
We object.

The Court:
Sustained.

Mr. Davis:
Tell us what you saw, in regard to that car, in Tulsa, Oklahoma?

A. They had things to hook a tag back on there.

Q. All right. Did they stay there, Hollis Bryant and Sanchez, or did they leave there?

A. They left.

Q. Do you know where they went?

A. No.

Q. Did you go with them?

A. No.

Q. On the two occasions when you came to Montgomery, did you see with whom Hollis Bryant dealt, on each occasion?

Mr. Fuller:
We object.

The Court:
Sustained.

Mr. Davis:

Well, on the first occasion when you came to Montgomery, did you see with whom Hollis Bryant dealt?

Mr. Fuller:

I object.

The Court:

I am going to sustain it, because you used the word, "dealt."

Mr. Davis:

Thank you. On the first occasion that you came here, did you see a person to whom Hollis Bryant talked—

Mr. Fuller:

Object.

The Court:

I sustain that, you have already gone into that.

Mr. Davis:

Did you see whether Hollis Bryant talked to anyone but the man you said he talked with?

Mr. Fuller:

I object.

The Court:

I sustain that. The question is, as I understand it, whether or not he talked with anyone at Montgomery except Mr. Roberson. You have not specified any

trip, or anything else. Now, I am going to sustain these objections as long as you deal in ambiguity.

Mr. Davis:
I believe that is all.

The Court:
Cross examination.

Mr. Fuller:
Mrs. Philyaw, how old are you, please?
A. I am twenty-three.
Q. Now?
A. Yes, sir.
Q. And you are married and living with your husband?
A. Yes, sir.
Q. What place do you live now?
A. Woodland Homes, in Greenville, South Carolina.
Q. Now, when you and Hollis Bryant were traveling about the country, Hollis Bryant was married at the time, was he not?
A. Yes.
Q. He had a wife and children?
A. Yes, two children to be exact.
Q. And you and he traveled about the country, I believe you answered Mr. Davis' question, stealing automobiles for a living, is that right?
A. That is right.
Q. How long did that go on?
A. I am not for sure.
Q. Well—
A. Started somewhere in 1953.

Q. Did you start in 1952, do you know?

A. No, it was in 1953.

Q. Can you tell us approximately how many automobiles were stolen under that arrangement?

A. We will say under fifty.

Q. Under fifty. Have you served time in the Federal Penitentiary?

A. Yes, sir. I have.

Q. How much time did you get, Mrs. Philyaw?

A. I got two eighteen month sentences, running consecutively.

Q. Two eighteen sentences running consecutively?

A. Yes, sir.

Q. And you are no longer under any custody?

A. No, sir.

Q. Now, the question Mr. Davis asked you, about you and Mr. Bryant leaving the used car lot, will you tell us first the name that was on the used car lot, that you went to, if you remember?

A. I don't remember the name that was on the used car lot.

Q. Well, to refresh your recollection, let me ask you if the name on the sign up there, a good big sign, and the name was McBrayer and Hamel.

A. It could have been. I am not for sure.

Q. Well, is it your best judgment that the name up there was McBrayer and Hamel Used Car Lot.

A. I still don't remember. I just don't know.

Q. Do you remember when you and Mr. Bryant left the lot, whatever the name of it might have been, whether or not you left in the company of either Mr. McBrayer or Mr. Hamel, or both of them, after completing your negotiations.

A. I don't understand your question.

Q. When you left the lot, you went somewhere, didn't you?

A. Yes, sir.

Q. Where did you go?

A. Well, at that time, we went to the depot.

Q. And how did you get from the McBrayer-Hamel Used Car Lot, to the depot?

A. Mr. Roberson took us down there.

Q. Mr. Roberson, are you going to stick to that?

A. Of course.

Q. Is that the man you thought was Mr. Roberson, that took you to the depot?

A. Yes, sir.

Q. That is the man you thought was Mr. Roberson, is that correct?

A. Yes, sir.

Q. And is that same man, the man you say took you to the depot, is that man here?

A. Yes, sir.

Q. And you are going to stick to that as being true?

A. Yes, sir.

Q. And you are not going to tell us now, that it was Jack Hamel who took you to the depot?

A. No, sir.

Q. Do you know Jack Hamel when you see him?

A. I can't say that I do.

Q. Judge, may they bring Mr. Hamel and Mr. McBrayer, both of them, out here?

The Court:

Yes, sir.

The Court:

Witness, you may at this time, look those two gentlemen over. All right, you may escort them back into the witness room.

Mr. Fuller:

Do you recognize either one of them, Mrs. Philyaw?

A. No.

Q. You never saw either one of them before?

A. There was one of them, and maybe both of them, here the last time there was a trial.

Q. I mean had you seen them at any other place?

A. No, sir.

Q. You didn't see them at the McBrayer-Hamel Motor Company at all?

A. No, sir.

Q. Never, other than in this Court room?

A. No, sir.

Q. I want to ask you, if on the other trial of this case, when I asked you if you would state positively whether you left with Mr. Hamel or Mr. McBrayer, if you didn't answer, that you were not certain?

Mr. Davis:

I object.

The Court:

He is reading from the record, is that right?

A. Yes, sir.

The Court:

Overrule your objection.

Q. Did you state on previous trial of this case, that you were not certain whether it was Mr. Mc-

Brayer or Mr. Hamel that you left the McBrayer-Hamel Car lot with?

A. Not that I remember.

Q. Let me ask you this: Q. "Did you know whether it was Mr. Hamel, or Mr. McBrayer?" And let me ask you if you didn't say this: "I can't remember." Is that your testimony?

A. I can't see what you mean.

The Court:

He is asking you if you remember saying that the last time you testified here. Do you remember the question and that answer?

A. No, I can't say that I do.

The Court:

All right. Go ahead.

Mr. Fuller:

Now, let me ask you further; I want to know if you can state the name of a person that paid Hollis Bryant any money, on either one of these two occasions?

A. You mean did I see the money paid to him?

Q. Yes, on either one of these two occasions?

A. No.

Q. You didn't see it?

A. No.

Q. You don't know who paid Hollis Bryant the money, do you? Of your own knowledge?

A. As far as seeing the money paid, no.

Q. That is all.

The Court:
Any re-direct?

Mr. Davis:
No further questions.

ELMER THAGGARD, called as next witness, being duly sworn, testified as follows:

Direct Examination.

Mr. Varner:
Q. Your name is Elmer Thaggard?
A. Yes, sir.
Q. You are otherwise known as Ina Thaggard?
A. That is right.
Q. Where do you live?
A. At Rutledge, Alabama.
Q. Back in March of 1953, what were you doing?
A. I was in the mercantile business and automobile business.
Q. Did you or did you not have a partnership with Billy Beasley and Elmo Beasley, in the automobile business?
A. Yes, sir.
Q. And did you do business with Herman Roberson about that time?
A. Yes, sir. I bought a car from him.
Q. What kind of car was it?
A. A 1948 Chevrolet.

The Court:
About what time?

Mr. Varner:
The bill of sale shows March, 1953, as the time.

Q. Will you look at that paper. Do you recognize that.
A. Yes, it looks the same.
Q. Well, to your best judgment and knowledge is that the bill of sale on that automobile?
A. I would say it is.

Mr. Varner:
I introduce this bill of sale in evidence.

The Court:
Let it be admitted.

Mr. Varner:
Your witness.

Cross Examination.

Mr. Fuller:
Q. Mr. Thaggard, would you read this bill of sale that has just been offered in evidence and marked Government's Exhibit No. 3, to the jury please, sir.

The Court:
There is a lot of printing on there and there is a lot of it that isn't applicable, as I take it, why don't you just show it to the jury, and let the witness read the specific portions you want to offer and then you just hand it to the jury and let them read it.

Mr. Fuller:
If you would read the heading on it, Mr. Thaggard, please, sir.

A. That is McBrayer Motors.

Q. Read the name of the purchaser?

A. Ina Thaggard, Rutledge, Alabama, One 1948 Chevrolet, 4 door sedan, Motor No. so and so, $600.00.

Q. That was the cash price?

A. Yes, sir.

Q. And what does it say down in the left hand corner?

A. It says for resale by Jack Hamel.

Q. Mr. Thaggard, you received a subpoena from both sides in this case, have you not?

Mr. Davis:

We object.

The Court:

I sustain the objection.

Mr. Fuller:

I will ask you, Mr. Thaggard, if you looked at this automobile on the lot of McBrayer-Hamel or Hamel-McBrayer Motor Company, lot here in Montgomery, before you purchased it?

A. The car was parked in the front of the lot.

Q. Is that the McBrayer-Hamel Motor Company lot?

A. That is right.

Q. Here in Montgomery?

A. That is right.

Q. And do you know whether or not the automobile was hidden in any way, or parked out in the open on the lot, as far as you saw?

A. The car was open to anybody passing, it was sitting right out almost in front of the lot.

Q. Did you talk to Mr. Jack Hamel about the car, did you have a conversation with him at the time you bought it.

A. Yes, I did.

Q. Was that just prior to the purchase of the car?

Mr. Davis:
We object.

The Court:
Overruled.

Mr. Fuller:
You did talk with Jack Hamel about the time you bought the car, did you? About buying this particular car at the Jack Hamel-McBrayer Motor Company, is that correct?

A. Yes, that was some three or four days before I bought the car.

Q. All right. Just tell to the best of your recollection what he said and what you said to him, about the car?

A. Well, to begin with, I believe Herman called him. Herman showed me the car and I had seen Herman out at the automobile sale, and he told me that McBrayer and Hamel were selling this stock of automobiles out, and he was fixing to take the lot back over, and he told me if we would come by there, that we could probably get some pretty good buys. We were just going in the automobile business and we were trying to get a stock of automobiles. And so, after the sale was over, we went by out there, and so I called Herman and wanted to check with him on automobile sales and so he told me just to look around and see if there was anything there that

I might want and they would try to sell it to me. I looked around for a little bit and I asked him about the Chevrolet—

Mr. Varner:
We object.

The Court:
Asked who about it?

A. I asked Herman about it. I believe he told me that they wanted $700.00 for it, he thought. And so I told him I could not give that much for it. He asked me what I would give for it, and I think I offered him $600.00 for it and he said he didn't know whether he could take that for it or not, he would call Jack and see. Said he was just helping Jack out—

Q. He called Jack to see whether he could or not, Jack who?

A. Jack Hamel.

Q. Who, if you know, came up there?

A. Jack Hamel came.

Q. Now, what was said when Jack Hamel got there?

A. Well, I don't remember just the words. I believe Herman told him that I had offered $600.00 for the car, if I am not mistaken, and he called Herman, I believe, around side the car, and they talked a little bit, and so Herman told me that Jack didn't want to take that for the car. And so I told him I would not give more than that for the car, and that was about all that was said. I guess. They went on back in the office. If I remember right.

Q. Now, did that car get subsequently delivered to you at Rutledge, Alabama.

A. That is right.

Q. And who delivered the car to you, Mr. Thaggard?

A. Walter Herman Roberson.

Q. Is he Mr. Herman Roberson's son here?

A. He is.

Q. How long after that was it, approximately, that you found out that the automobile was stolen?

A. I don't remember, it must have been eight or ten months. I don't remember just the length of time.

Q. How long had you known Herman Roberson, before this came up?

A. I guess I had been knowing Herman twenty years, or longer.

Q. It dates back to when you and Herman Roberson both lived neighbors, down in Crenshaw County, didn't it?

A. Yes, sir. We lived some eight or ten miles from each other.

Q. When you found out the car was a stolen car, what did you do about it?

A. I believe I come up here and went by the lot one day and talked to Herman about it.

Q. What did you and Herman do if anything?

A. Well, Herman told me it was Jack's car and he would get in touch with Jack, and see if he wouldn't make it good, if Jack wouldn't make it good, that he would, as he was the cause of me buying the car.

Q. Did you and Herman Roberson go to see Jack Hamel on that occasion, or on a subsequent occasion, along about that time?

A. The first afternoon I was by there I believe Herman called and talked to Jack.

Q. Well, you don't know what was said, you didn't see him that afternoon, did you, Jack Hamel?

A. I don't think so.

Q. All right. Did you and Herman Roberson, the defendant in this case, subsequently go to see Jack Hamel?

A. Yes, I did.

Q. Where did you see Jack Hamel?

A. In Jack's office.

Q. In Jack Hamel's office?

A. Yes.

Q. Now, tell to the best of your recollection, what Herman Roberson said, and what Jack Hamel said, and what you said?

A. Well, I believe it was at the time I come up here to get paid for the car. I had already paid my lawyer.

Q. Tell what took place out there when the three of you were present, please, sir.

A. I told Herman I wanted my money, and he said well, we would go down to Jack's and see if he could get it.

Q. When he got down there, what did Jack Hamel say and what did Herman say to Jack Hamel, and what did Jack say to Herman Roberson?

A. Herman told him that I was there for my money for the car. And Jack told him that he didn't have it.

Q. Did he say why he didn't have it?

A. I believe Herman asked him why he didn't have it and he said he just didn't have it. So he wanted to know if he couldn't get it up or something, he said no, he couldn't get it up, and he asked about if he didn't sell it to me.

Q. Was anything said about McBrayer at that time?

A. Yes.

Q. What was said about McBrayer? What did Jack Hamel say about McBrayer, in your presence there with Herman Roberson?

A. He said that Jack had left with all the papers and bills and everything.

Mr. Varner:

We object. That is not responsive. He said that Jack had left. I just wanted to get it clear.

The Court:

I understood him to say that Jack Hamel said that the reason he couldn't pay it was that McBrayer had left with the papers.

Mr. Varner:

That is what he meant to say, but he said Jack instead of McBrayer.

The Court:

All right.

Mr. Fuller:

Now, lets try it again, Mr. Thaggard, what did he say?

A. He said that his partner, McBrayer, had left with all the papers, and they had everything in shape to where he could not do anything.

Q. What did he say about him leaving with the money if anything?

Mr. Davis:

I object, that has nothing to do with the case.

The Court:

I will sustain that, you can ask him whether or not he said he couldn't pay it.

Mr. Fuller:

Did he say he was out of business or words to that effect, and he couldn't pay it?

A. Yes, he said they were out of business and Jack left with all the papers and everything and he was not going to do anything about any obligations that they had out.

Q. Now, when you were looking at the car, on the McBrayer-Hamel lot before you bought it, did or did not Jack Hamel make any representation to you as to the condition of the car?

A. Yes, he said it was a nice car.

Q. That was Jack Hamel?

A. Yes, sir.

That is all.

The Court:

Any re-direct?

Re-Direct.

Mr. Varner:

Q. Did Roberson go ahead and pay you for the car?

A. Yes, sir.

That is all.

The Court:

Who did you pay for the car?

A I paid a lawyer down in Crenshaw County.

The Court:

When you first bought the car, and it was delivered to you by Walter Herman Roberson, who did you pay then, for the automobile?

A. I paid Walter Herman Roberson.

Q. When he brought it?

A. Yes, sir.

Q. By check or by cash or what?

A. It was cash and check, I believe. That was on a Sunday afternoon, and I think I had part of it in cash and maybe some of it in personal checks.

Q. Checks that had been written to you by other people?

A. That is right.

Q. Have you made any effort to find out who endorsed those checks?

A. No, sir. I haven't.

Mr. Fuller:

Mr. Thaggard, you run a mercantile business down at Rutledge, Alabama, don't you, as well as your garage business?

A. That is right.

That is all.

Mr. Davis:

The Government rests.

The Court:

Gentlemen, I am going to take a ten minute recess at this time, do not discuss the case, and do not permit any one to discuss it in your presence or in your hearing. I am going to permit you to go out in the hall way. Don't form any opinion as to the guilt

or innocence of the defendant. Court will be in recesss for ten minutes.

(After recess.)

The Court:
Do you have a motion to make?

Mr. Fuller:
Yes, sir. If the Court please, I ask Your Honor to grant a motion for acquittal of the defendant and for a directed verdict.

The Court:
I do, for the record, overrule and deny your motion insofar as Count 1, Count 3 and Count 4 is concerned. I want to hear from the District Attorney as far as Count 5 is concerned, before I make any ruling on the selling aspect of it.

Mr. Varner:
Yes, sir.

The Court:
What evidence do you have in this case that this defendant sold that automobile?

Mr. Varner:
Of course, the evidence is clear that he bought the automobile, which puts it in his possession. The evidence is clear that not long after that an agent on the lot—

The Court:
Do you have any evidence that Bill Rhodes was an agent?

Mr. Varner:
No, sir. We are speaking of Cameron Neal.

The Court:
You don't have any evidence in the record as I remember it, that Neal was an agent.

Mr. Varner:
I believe that we do.

The Court:
What is it. I remember the witness testifying that he understood that Neal was working out of Roberson's lot, or something like that, but there was no basis for his understanding, as far as the record shows, as far as I consider the testimony is concerned, it is bare conclusion, without any justification.

Mr. Varner:
It was allowed in evidence without objection.

The Court:
That is right.

Mr. Varner:
And he testified that he bought it at the Roberson Motor Company lot.

The Court:
That is correct.

Mr. Varner:

From a man whom he understood, if that is the way it was, and I understood it from the man, we will check your understanding, it may be right, from a man whom he understood to be a man who was Roberson Motor Company's agent. And the car, the only evidence we have so far, is that Roberson bought it from Bryant for a little or nothing.

Mr. Davis:

May I add something?

The Court:

I want to hear you for what you consider the evidence to be, that Herman Roberson sold the automobile. You have not offered any proof that Neal worked for Roberson, you have not offered any proof that Roberson even knew Major Joye, or had ever talked with him.

Mr. Varner:

He didn't I don't believe.

Mr. Davis:

Your Honor, please, may I give it to you in the aspect that is most favorable to the Government: 1. This car was purchased by Herman Roberson. And the other elements are all there on the purchase. 2. It was sold from his lot by the undisputed testimony in this case from his used car lot, the Roberson Motor Company lot, by an employee on that lot.

The Court:

You have proof that he was an employee"

A. He said, "I talked to Mr. Chalmers Neal on the lot." The bills of sale, themselves, are here, here is one and here is the other. One shows that this man signed the bill of sale to Herman Roberson, he called for Herman Roberson, and it was filled out to Herman Rhodes. The other one shows it is from Bill Rhodes, and it was sold from Herman Roberson's lot. Now, Herman Roberson could use any name he wanted to—

The Court:
I understand that.

Mr. Davis:
And as to the most favorable aspect to the Government, it was sold from his lot, the car was in his possession, so he must have disposed of the car.

The Court:
This is the strongest part of your evidence right here; that Bryant's bill of sale was made out to Bill Rhodes; and that the Major bought the Cadillac, he bought it from Neal at the Roberson car lot; and that he received the bill of sale from Neal, signed Bill Rhodes.

Mr. Davis:
All right.

The Court:
I am going to overrule your motion as far as Count 5, is concerned.

Mr. Fuller:
We would like to have an exception to Your Honor's ruling on each count, separately and severally.

The Court:

You may have that exception separately and severally. Bring the jury in. Who is your first witness?

H. A. BARNETT, being called as a witness, being duly sworn, testified as follows:

Direct Examination.

Mr. Fuller:

Q. Will you state your name?

A. H. A. Barnett.

Q. Mr. Barnett, what business are you in, please, sir?

A. I am Manager of Auto Discount Company.

Q. And previous to that, what was the name of that business, Mr. Barnett?

A. The Home Finance Company.

Q. Now, as Manager of the Home Finance Company I will ask you to state whether or not you handled the financing of a—I hand you a document here, that has been identified as Defendant's Exhibit No. 2, and ask you to state what it is, please, sir.

A. It is a conditional sales contract.

Q. And from whom does it show that it was made?

A. The contract was signed by Norman Hatchett, in favor of McBrayer-Hamel Motor Company.

Q. What is the date of that contract, please, Mr. Barnett?

A. March 17, 1953.

Q. Now, what is the description of the automobile in that contract, please.

A. A 1950 Oldsmobile, 88, two-door.

Q. Does it give the Motor Number there?

A. Yes, sir.

Q. What is that?

A. 508A9371.

Q. Now, how much money does that paper represent is being financed on that automobile?

A. $1812.00.

Q. Now, that contract is in favor of what place of business?

A. McBrayer-Hamel Motors.

Q. Who was the contract for, Mr. Barnett, who financed it?

A. The Home Finance Company.

Q. And what date was it financed, please?

A. I don't have that card here, it was probably the same day though, or soon afterwards.

Q. That contract that you hold in your hand there, is Defendant's Exhibit No. 2, I will ask you to state whether or not it remained in your possession from the time it was made, as Manager of the Home Finance Company, until you brought it to this Court on the last trial of this case?

A. Yes, sir.

Q. Is there any alteration in that contract, that you observe?

A. No, sir.

Q. Have you seen the contract since the last term of Court, up to this term of Court?

A. No, sir.

Q. The last time you saw the contract was where?

A. I left it with the Court.

Q. Right here in Court?

A. Yes, sir.

Q. I will hand you a document that I would like to get marked as Defendant's Exhibit No. 3, please, and ask you to state what the document is, the one just identified as Defendant's Exhibit No. 3?

A. That is a bill of sale.

Q. From whom to whom?

A. From McBrayer-Hamel Motors to Norman Hatchett.

Q. What does it relate to, Mr. Barnett?

A. A 1950 Oldsmobile.

Q. Does that purport to refer to the same car that is in the contract?

A. Yes, sir.

Q. What is the date of that bill of sale?

A. March 17, 1953.

Q. I will ask you to state what this document is, let me get it marked as Defendant's Exhibit No. 4, This document that has just been identified as Defendant's Exhibit No. 4, I will ask you to state what that is, please sir.

A. It is not completely filled out, but it looks like a bill of sale.

Q. From whom to whom?

A. McBrayer-Hamel Motor Company.

Q. Does that purport to relate to the same Oldsmobile automobile that we have been talking about?

A. Yes, sir.

Q. What is the date of that last document?

A. Defendant's Exhibit No. 4, It is dated March 25, 1953.

The Court:

How are they material, Mr. Fuller?

Mr. Fuller:

Your Honor, they are material in my opinion, because they relate to the sale of one of these three automobiles involved in this case.

The Court:

It may be true, but the evidence of this document gives a different motor number altogether.

Mr. Varner:

Which motor number is correct, the one on these papers or the one on the document here?

Mr. Davis:

That is the Serial Number on those papers Your Honor. The other is the motor number.

The Court:

Is it stipulated that these three documents refer to the same automobile. I am trying to eliminate the confusion in the jury's mind, because it certainly confuses mine, when you talk about the same automobile having two different motor numbers. It is stipulated between counsel in this case, that these three documents now offered by the defendant, relate to the 1950 automobile, about which Dr. Melvin testified and Mr. Bryant testified.

Mr. Davis:

Yes, sir. We are willing to stipulate, if you are, I think we can prove it, Your Honor.

The Court:

All right. I am not going to admit them until you do prove it.

Mr. Fuller:

Mr. Barnett, what if anything happened to that automobile, the Oldsmobile, that you have been testifying about, as described in those three exhibits, if you know?

A. About a week after Hatchett bought the Oldsmobile he went back to the lot and traded it back for another car. A 1950 Pontiac.

Q. Do you have the bill of sale there, relating to the 1950 model Pontiac automobile?

A. Yes, sir.

Q. To your knowledge was this Oldsmobile automobile sold to another person at a later date?

A. Yes, sir.

Q. To whom was it sold?

A. Sergeant Roberts.

Q. Have you seen him here as a witness today?

A. Yes, sir.

Q. Did you finance the automobile, that same automobile, that was referred to in those three exhibits, when it was sold to Sgt. Roberts, did the Home Finance Company handle the paper on that?

A. Yes, sir.

Q. And did Sgt. Roberts pay out his contract with you?

A. He did.

Q. As the seller to the second time through the Home Finance Company—

Mr. Davis:

We object.

Mr. Fuller:

Through what automobile concern did you finance the sale to Sgt. Roberts?

A. McBrayer-Hamel Motors.

Mr. Fuller:

Your Honor, to avoid confusion, I believe it is not stipulated between the Government and the defen-

dant, that the automobile referred to in these three exhibits 2, 3, and 4, is the same Oldsmobile automobile as is described in Count 3, of the indictment in this case.

The Court:
All right.

Mr Davis:
We want to answer that. And it was the automobile of Dr. J. C. Melvin, who testified here in this case.

Mr. Fuller:
That is all right.

The Court:
It is stipulated that Melvin's automobile and this Oldsmobile are one and the same, that is as far as we need to go.

That is all.

SGT. JAMES R. ROBERTS, next called as a witness, being duly sworn, testified as follows:

Direct Examination.

Mr. Fuller:
Q. Is this Sgt. Roberts, James R. Roberts?
A. Yes, sir.
Q. Sgt. are you a military policeman in, at present in the United States Air Force?
A. Yes, sir.
Q. And where are you stationed?

A. At Dobbins Air Force Base, Marietta, Georgia.

Q. I will ask you to state whether or not in April of 1953, you purchased a 1950 model Oldsmobile from an automobile agency here in Montgomery?

A. It was the 30th day of March.

Q. Now, will you describe that car to the jury, please sir?

A. It was a 1950, green, Oldsmobile, coupe.

Q. Did the car have one or more seats?

A. It was a two-seated car.

Q. Now, Sgt., did you receive a bill of sale to that car?

A. Yes, sir. I did.

Q. Can you tell us now where the bill of sale is.

A. No, sir. I can't because my original bill of sale was lost when I was over in Korea.

Q. Now, Sergeant, do you have any receipts where you paid on that car?

A. Yes, sir. I have.

Q. Do you have there a first receipt that you received there. I hand you a receipt and ask you to look at that, I won't offer it in evidence because I know you want to keep them. Look at that and tell this jury what it is.

Mr. Davis:

We object. The receipt is the best evidence.

Mr. Fuller:

May I offer it, Your Honor, and then put a copy in its place?

The Court:

Yes, sir.

Mr. Fuller:

I offer it as Defendant's Exhibit No. 5.

Q. Sgt. Roberts, looking at this paper, that has been marked Exhibit 5, just tell the jury what it is.

Mr. Davis:

We object, the paper speaks for itself.

The Court:

Overruled.

Mr. Fuller:

Would you read the paper to the jury, sir.

A. Home Finance Company, 222 Bibb Street, in pencil is written "Cash" Receipt number 55918. Montgomery, Alabama, 4/14/1953. Account No. 1519. Received from J. R. Roberts $73.55, Home Finance Company.

Mr. Fuller:

We offer in evidence this Exhibit No. 5.

Mr. Davis:

No objection.

(Received in evidence and marked Defendant's Exhibit No. 5.)

Mr. Fuller:

Sergeant, will you describe the circumstances under which this receipt was issued?

A. Yes, sir. May I ask one question. I will have to go back to the day I bought the car in order to get to that receipt.

Q. Who did you buy the car from?

A. I bought it from Jack Hamel.
Q. Can you identify him if you see him?
A. Yes, sir.
Q. Would you ask Mr. Hamel to step in, please, sir.

(Mr. Hamel comes in.)

The Court:
Can you tell from there?

A. Yes, sir.

Mr. Fuller:
Is that the man you bought the car from, Sergeant?
A. Yes, sir.
Q. Now, under what circumstances do you have that receipt that it was given under?
A. I bought the car on the 30th of March, 1953, and a couple of days after I had bought the car, Mr. Hamel called me and said come out and give him my first month's payment in advance, or they wouldn't finance my car. So I went out to McBrayer-Hamel Motors and gave someone out there, it has been so long I can't remember exactly who I handed the money to, but I gave someone the $73.55, well then when my first payment became due, I received a call from the Home Finance Company they wanted to know where my first payment was. I told him I had paid it.

Mr. Davis:
We object to the conversation.

Mr. Fuller:

Don't tell what you said, just tell what you did.

A. So I proceeded out to McBrayer-Hamel Motors and met Mr. Roberson there. I said, I didn't know his name right then, I was introduced to him there, I said: Mr. Roberson, I paid $73.55 in here when I bought my car for my first payment. Home Finance Company has not received it. I want to know about it. Here are the papers on the car and everything. He said: Sgt. I do not know, but I will find out who has got your money, you go down to the Home Finance Company and wait."

Q. What happened when you got down there?

A. I got down to the Home Finance Company and waited thirty or forty minutes and Mr. McBrayer came in.

Q. Can you identify him?

A. Yes, sir.

Q. All right, will you bring him in, Mr. Marhsal.

(Mr. McBrayer comes in.)

A. That is Mr. McBrayer. He came in and paid Mr. Barnett the $73.55 and Mr. Barnett gave me that receipt.

Q. Mr. McBrayer is the man that came to the Home Finance Company and made the payment, and you were present?

A. That is right. I was present and I got the receipt from Mr. Barnett.

Q. And you have had it in your possession since?

A. That is right.

Q. Is the receipt just like it was when you received it? I am referring now to Defendant's Exhibit No. 5.

A. Yes, sir, it is identically the way it was. No alterations, just a little wear and tear.

Mr. Fuller:
That is all. Thank you.

Mr. Davis:
No questions.

The Court:
Next witness.

BILL RHODES, being duly sworn, testified as follows:

Direct Examination.

Mr. Fuller:
Q. Is this Mr. Bill Rhodes?
A. Yes, sir.
Q. Mr. Rhodes, are you the brother-in-law of Herman Roberson, the defendant in this case?
A. Yes, sir.
Q. Where have you been for the past two years?
A. Living on Herman Roberson's place. And I was in the Veteran's Hospital. My family lived there.
Q. Your family were living on Mr. Roberson's place. That is Mrs. Roberson's sister, is that right?
A. Yes, sir.
Q. Your wife is Mrs. Roberson's sister?
A. Right.
Q. You have been where?
A. In the Veteran's Hospital, Montgomery, Alabama.
Q. And what is your knowledge of what your condition is?
A. Tuberculosis.

Q. And I will ask you if you also have any other disability?

Mr. Davis:
We object.

The Court:
Overruled.

Mr. Fuller:
Would you tell this jury what type discharge you received from the armed forces, and why you received it, as far as you know?

A. Nervousness.

Q. And what was that trouble caused by?

A. Combat.

Q. And did you remain in that condition for any length of time?

A. Yes.

Q. Now, I will ask you if on account of that condition that arose, that you are drawing compensation from the United States Government now?

A. That is right.

Q. Now, Bill, where were you living on or about June 8, 1953?

A. At Fuller's Circle.

Q. And you mean by that, that you were living here in South Montgomery, is that right?

A. Yes, sir.

Q. Were you renting a grocery store from my father at that time?

A. Yes, sir. We ran a grocery store and filling station.

Q. Your wife was operating the business, is that right?

A. Yes, sir.

Q. And at that time what connection, if any, did you have with a man by the name of Hollis Bryant. Would you recognize a man that you bought an automobile from on or about June 8, a 1951 car?

A. Yes, sir.

(Mr. Hollis Bryant is brought into the Court room.)

A. That is him.

Q. Bill, what dealings, if any, did you have with this man about the purchase of a 1951 model Cadillac automobile?

A. Well, I went down to Herman's that morning. I had a pick-up truck. We had cows at Cecil and we had cows in Georgia, and we had cows down at Cecil, Ala., and I wasn't feeling good. We had some sick cows over at Cecil, and Herman said he would go—

Q. Don't tell what Herman said, just tell if Herman had left and you knew where he was going.

A. Yes, he told me he was going to Georgia.

Mr. Davis:

We object.

The Court:

That is not competent evidence. Gentlemen you will not consider that.

Mr. Fuller:

Well, Bill, I will ask you that if this man Hollis Bryant came to your store, what, if anything did you do for him?

A. I asked him to come in.

Q. Did you make a trade with him then?

A. No. I didn't make no trade with him.

Q. Did you go with him anywhere?

A. I went on down to Herman's and he followed me down there. He asked me where Herman was, and I told him Herman was gone to Georgia, and was not at home, and I went on down there to see about the cows, and in the afternoon, after I ate dinner, I went on and drove down there on my truck. And we went on down there to the farm.

Q. When you got down there, did you borrow any money from Mrs. Roberson—

Mr. Davis:

We object.

The Court:

I sustain the objection. Do not lead the witness. If he is a man with a mental disability as you claim, do not lead him.

Mr. Fuller:

All right, Bill, just tell what if anything took place when you got down there, with this man Bryant?

A. Well, I didn't see anybody down there that evening. I didn't look for nobody.

Q. Well, I didn't ask you that. I asked you what you did?

A. Me and him kept beating our gums down there, and I said I might buy a car, but it would be the next morning before I could buy it.

Q. Why was it to be the next morning?

A. Well I had to get ahold of some money.

Q. Well did the man come back the next morning?

A. Yes.

Q. Did you get hold of any money?

A. I borrowed it from Mrs. Roberson.

Q. In what form did you get it, Bill?

A. I just went and told her I wanted $2,000.00 that I was going to buy a Cadillac, a 1951 Cadillac.

Q. Well, did you get the $2,000.00?

A. I got a check, yes, sir.

Q. Do you know what bank it was on?

A. The Alabama National.

Q. Wait right there. I would like to get this check marked as Defendant's Exhibit No. 6.

Bill, I hand you this check, marked Defendant's Exhibit No. 6, it is a photostatic copy of the check. And I ask you to look at it and see whether or not, that is the document you have been talking about, the check?

A. It is.

Q. What is the date of that check, Bill?

A. June 8, 1953.

Q. Who is the check payable to?

A. Bill Rhodes.

Q. What is the amount of the check?

A. $2,000.00.

Q. Who is it signed by?

A. Mrs. Herman Roberson. Loan by Mrs. Roberson.

Q. And what indorsement, if any, is on the back?

A. Bill Rhodes.

Q. Is that your signature?

A. Yes, sir.

Q. Your Honor, we offer in evidence this check, identified by this witness, as Defendant's Exhibit No. 6.

The Court:

Any objections?

Mr. Varner:
Your Honor, I would like to make one objection. I doubt the relevancy of the check, in view of the fact that the car,—what is the date?

Mr. Fuller:
June 8, 1952.

Mr. Varner:
We withdraw our objection.

The Court:
It will be admitted.

(Received in evidence and marked Defendant's Exhibit No. 6.)

Mr. Fuller:
Now Bill, what, if anything, did you do with that check after you got it?

A. I got the check cashed and I gave him the money right there in the bank.

Q. Who do you mean you gave the money?

A. That boy that stepped to the door a little while ago.

Q. Why did you take Hollis Bryant to the Bank with you?

A. He would not take a check, and I drove him down there and got the check cashed and gave him the money and went on back to the farm to feed my cattle.

Q. And what other money did you give to Hollis Bryant, if any?

A. I gave him $500.00 of my wife's money. My own money, my wife's and mine.

Q. Gave him the store money?

A. Yes. $2500.00 is what I paid him in all.

Q. What, if anything, did you get in exchange for your $2500.00 in the way of a paper?

A. I got a bill of sale.

Q. I will hand you now, Bill, the Government's Exhibit No. 1, and ask you to look at it and see whether that is the bill of sale you are talking about?

A. That is it.

Q. Now, Bill, how did you come to part with the possession of that bill of sale?

A. When the FBI men came out there, they wanted it.

Q. Is this one of them?

A. Yes, sir. He was in the back seat from me.

Q. You are identifying Mr. Myron Turner. Is he one of them that came out there, Bill?

A. Yes. He come out there and S. E. Tranum and another one.

Q. Now, who is S. E. Tranum?

A. I don't know. He is the man that did the most of the talking.

Q. What did S. E. Tranum tell you at the time he came out there in the presence of Mr. Myron Turner?

A. He was just talking about the car and all that stuff.

Q. What did he tell you to do, or not to do?

Mr. Davis:

We object to what Mr. S. E. Tranum did.

The Court:

I sustain the objection.

Mr. Fuller:

Bill, where was the bill of sale, and who took it off of you, when you were arrested. You were arrested, were you not, Bill?

A. No, sir. They didn't arrest me that day.

Q. Did they take the bill of sale that day?

A. Yes, sir. They taken that bill of sale the first day.

Q. Who took it?

A. The fellow in the back seat. The little fellow. That one.

Q. Mr. Turner?

A. Yes, sir.

Q. When did you next see that bill of sale, Bill?

A. This is the first time I have seen it from that day to this one.

Q. Now, the day you went down to Mr. Roberson's, that would have been the day that you were talking about when you went down there with Hollis Bryant, when you and Hollis Bryant got down to Mr. Roberson's house, was Mr. Roberson at home?

A. No, sir.

Q. Did you know whether or not he was at home, down there?

A. I didn't think he was, I didn't see him, he was not there, when we got there.

Q. Well, did he come there?

A. No, sir.

Q. In your presence did Hollis Bryant have any conversation with Herman Roberson at his home down there about anything?

A. No, sir.

Q. Now, Bill, after you bought this Cadillac automobile, what, if anything, did you do with it?

A. I left it up there at the store, and house. I drove it to Cecil two or three times. I drove it around, put a new tag on it.

Q. Did you buy a tag for the Cadillac?

A. Yes, sir.

Q. Whose name did you buy it in?

A. In my name.

Q. How long did you keep the Cadillac?

A. About six weeks, I don't know exactly but it is somewhere in that neighborhood.

Q. Now, this little store, which you testified you and your wife were operating, is it at a road intersection?

A. Yes, right in the corner.

Q. With reference to that store, where did you keep this Cadillac automobile?

A. Setting right in front of it, with the tail and setting right out in the street.

Q. Did you hide it?

A. No.

Q. Is that the same Cadillac automobile that was sold to a Major Joye, if you know?

A. Yes, sir.

Q. I will ask you to look at the Government Exhibit No. 2. This is a bill of sale to Maj. Kenneth E. Joye, and ask you to see if that is your signature on that bill of sale?

A. Yes, sir.

Q. Is that your writing?

A. Yes, sir.

Q. Did you pay back to the Roberson Motor Company or Mrs. Herman Roberson any money out of this transaction?

A. When I traded with Major Joye, I got a 49 Olds, and $1800.00 cash, to the boot, well, I still owed them

$300.00,—$200.00 and $100.00 for cleaning it up to sell, see. And I didn't have no money and my store was running low, and I went down here to the Finance Company and borrowed $800.00 to get my Oldsmobile. I paid it back at $60.00 a month.

Mr. Fuller:
I would like to have this document marked as Defendant's Exhibit No. 7.

Mr. Fuller:
Is that your signature?
A. Yes, sir, that is my signature.

Mr. Davis:
No objection.

(Introduced in evidence and marked Deft's Ex. No. 7.)

Mr. Fuller:
Also, Bill, I hand you two receipts which have been identified as Defendant's Exhibit No. 2 and 3, one is for $2,000.00 to Bill Rhodes, and the other one is for $100.00 made to Bill Rhodes; both of them dated August 11, 1953. One of them reads $2,000.00 to repay loan on 51 Cadillac, and the amount of loan $2,000, and the amount of credit $2,000, Roberson Motor Company, C. M. Neal. The second one of the same date, received from Bill Rhodes $100.00 to go on Cadillac, amount of credit $100, Roberson Motor Company by C. M. Neal. Did you pay back the amount of money you owed?
A. Yes, sir.

Mr. Davis:
I object, if Your Honor please. Let him have them marked at least for identification before he reads them in.

The Court:
That is a proper exception, Counsel. Let them be marked.

Mr. Fuller:
They are already marked Exhibit 2, and 3.

Mr. Davis:
No, sir. He has not identified them today. That was marked the last time of trial.

Mr. Fuller:
I am sorry. We offer these two exhibits as Defendant's Exhibits No. 8 and No. 9.

(Received in evidence and marked Deft's Ex. 8, and 9.)

Mr. Fuller:
That is all.

Cross Examination.

Mr. Davis:
Q. Were you suffering from this nervous disability at the time, in 1953, that you bought this automobile?
A. Ever since 1946, sir.
Q. And is Mrs. Roberson your sister-in-law and Herman is your brother-in-law?
A. Yes, sir.

Q. Mr. Rhodes, do you know C. M. Neal?
A. Yes, sir.
Q. Is that Cameron M. Neal?
A. Yes, sir.
Q. Did he, at that time, work for Herman Roberson in the used car lot called Roberson Motor Company?
A. Yes, sir.
Q. And was he employed by Herman Roberson?
A. Yes, sir.
Q. Did Mrs. Doris B. Roberson, did she own any interest in the Roberson Motor Company, if you know?
A. Yes, sir. I could blow the horn in front of their place and borrow money from either one of them.

Mr. Davis:
That is all.

The Court:
Gentlemen, I am going to recess until Monday morning. Do not discuss the case among yourselves. Do not permit anyone to discuss it with you, or discuss it in your presence, or discuss it where you can hear it. Don't form any opinion, Gentlemen, as to the guilt or innocence of this defendant. If anyone makes any effort to talk with you, directly or indirectly, I will expect you to call it to my attention, the first thing Monday morning when we come in Court.
This Court will be in recess until 10:00 o'clock Monday morning. You may go.

Monday, April 8, 1957.

The Court:

Gentlemen, so that there cannot possibly be any inference adverse to the Government, or adverse to the Defendant, I feel that it is necessary for me to state to you, and for the record, that the delay that has been occasioned has been because of my illness, and not because of any motions that have been made, or anything else that has occurred since Court was adjourned on this case.

As far as I know, we are ready to proceed, Gentlemen. I believe the last witness we had on the stand was Bill Rhodes for the defendant. Did you complete with his examination?

A. Yes, sir.

MR. JAMES D. FLOWERS, called as a witness, being duly sworn, testified as follows:

Direct Examination.

Mr. Fuller:

Q. Is this Mr. James D. Flowers?

A. Yes, sir.

Q. Mr. Flowers, what position do you hold at the Alabama National Bank of Montgomery?

A. I am Executive Vice President.

Q. How long have you held that position?

A. About fourteen years.

Q. I will ask you if at my request you caused the records of the Alabama National Bank, in so far as the accounts of Mr. Herman Roberson or Mrs. Herman Roberson was concerned, for the month of June, 1953 to be checked.

A. Yes, sir. I did.

Q. Mr. Flowers, I will hand you an account numbered Defendant's Exhibit No. 6, and ask you to look at it and state what it purports to be?

A. This is a photostatic copy of a check of Mrs. Herman Roberson's payable to Bill Rhodes, the amount of which is $2,000, indorsed on the back 'Bill Rhodes, and it was cashed by our Bank Paying Teller No. 1, at the Alabama National Bank.

Q. I will ask you the date of that exhibit?

A. The date is June 8, 1953.

Q. I will ask you to look a little closer and see if it was in 1953?

A. Yes, sir. It is 1953.

Mr. Fuller:

We ask this be marked Defendant's Exhibit No. 10.

(Received in evidence and marked Deft's Ex. No. 10.)

Q. I will ask you if this appears to be a little clearer photostat of the check you have just testified about?

A. Yes, sir.

Q. Look at that check and tell us what date that is?

A. It is dated June 8, 1953.

Q. Mr. Flowers, I will ask you how your Bank perforates checks, in so far as before or after the checks are photostated? That is, are they perforated before or after they are photostated?

A. We make a practice of photostating all of the checks first, for the reason that very often a perforation will obliterate the figures on the check.

Q. I will hand you here, what has just been marked Defendant's Exhibit No. 11, I will ask you to

state to the jury whether or not that statement shows when that $2,000.00 check that you have just testified about cleared the Alabama National Bank?

A. It shows it cleared under date of June 8, 1953.

Q. That is the same date as the date of the check?

A. Yes, sir.

Q. Now, I believe you said the indorsement on the back of the check contains what name?

A. Bill Rhodes.

Your witness.

Cross Examination.

Mr. Varner:

Q. Mr. Flowers, you testified that this paper shows this $2,000 check cleared the Bank on June 8, now does this identify the check in some way or does it just show that some $2,000 check had passed through the bank?

A. This particular debit would not specifically identify this check, except on our Recordak machine. Our Recordak machine would show this bunch of checks here, as being charged to that account on that particular day.

Q. Then there is nothing on this paper that you know about which indicated that this $2,000 debit here, is the same check, is there?

A. Nothing other than the fact that there is just one chance in a thousand that it might not be another $2,000 check put with the check for that amount being paid right here at the same time as this $2,000 check. Now, if we had our photostatic machine we could show you each of these other checks that went right on through on the same day.

Q. Yes, sir.

A. Now, is there anything on either of these checks, themselves, to show when they went through the bank? Or that they had cleared the bank?

A. Nothing but the Paying Teller's stamp. That is our Paying Teller No. 1's stamp, showing that this check was in fact cashed. That is our Paying Teller No. 1's stamp, that is N261-42, that is our number.

Q. Does that show anything about the date?

A. The only thing that would show the date is the check itself, which was perforated after this date was punched, see.

Q. Mr. Flowers, this figure here, indicates the deposit of $3600.00 on June 8, 1953, is that correct?

A. Yes, sir.

Q. Is there anything on here, on the check anywhere to show where that came from or who deposited it?

A. No, sir, there is a possibility it might be on the deposit slip.

Q. Is there any possibility that there might be anything at the Bank to show who deposited it, or whether it was a check or what it might have been?

A. Yes, sir.

Q. Could you get that for us, please?

A. You mean the check?

Q. Is it all right for him to take this?

Mr. Fuller:

We would have no objection to him taking it, but we want it back.

Mr. Flowers:

You want the deposit slip? I can get it?

Mr. Varner:

Yes, sir.

The Court:

At the conclusion of your testimony, you take whatever time is necessary to get it.

Mr. Varner:

That is all of the cross examination.

Re-Direct Examination.

Mr. Fuller:

Q. Mr. Flowers, Mr. Varner asked you if you had any way to tell whether or not that this $2,000 check shown on this paper, which has been identified as Defendant's Exhibit No. 11, was this identical check. I will ask you if this month's statement Exhibit No. 11, for the Defendant, shows any other $2,000 check cleared through your bank on this account?

A. It does not.

Thank you.

The Court:

All right. Re-cross.

Mr. Varner:

Will you tell me what this figure here represents?

A. That is the balance at the close of business on June 6, 1953.

Q. And that balance is indicated as $3556.00 on that date?

A. That is right.

Q. And we have on June 8, an indication of a deposit of $3600.00?

A. Yes, sir, that is correct.

Q. And the withdrawal on the same date was the $2,000 plus $1600.00?

A. Yes, sir.

Q. And the other small check which exceeded the amount of the balance on June 6?

A. That is correct. They had made a deposit—

Mr. Fuller:

We object to this line of questioning.

The Court:

I sustain the objection.

Mr. Fuller:

Your Honor, I would like to make further objection, unless the Government can show the materiality of Mr. Flowers going down there, checking through this bank account, that is immaterial. We are, as I understand it, concerned with this particular check and one of the automobiles involved in this case.

The Court:

I don't think it will be necessary to argue that, if you argue it, we will have to permit the Government to argue its theory. I think I understand it, I will overrule your objection.

Mr. Fuller:

We would like to have an exception.

Mr. Varner:

That is all for this witness.

MR. C. O. GOODSON, being called as a witness, being duly sworn, testified as follows:

Direct Examination.

Mr. Fuller:

Q. Is this Mr. C. O. Goodson?

A. That is right.

Q. Mr. Goodson, do you live here in Montgomery?

A. Yes, sir.

Q. And by whom are you employed at the present time?

A. Southern Motor Import.

Q. Who is the operator of Southern Motor Imports. Mr. Goodson?

A. Mr. Jack Hamel.

Q. And is he here as a witness?

A. Yes, sir. He is on the outside out there.

Q. I will ask you, if back in 1953, in the early part of the summer, if you saw this red-headed Government witness by the name of Hollis Bryant come to the lot of McBrayer and Hamel Motors after the McBrayer-Hamel Motors had moved from the lot belonging to Herman Roberson, the defendant in this case. Did you see that man come to that lot? —

A. He was down there one morning when I opened it up.

Q. What, about what time did you open up?

A. It was good day.

Q. Where was Mr. Bryant's automobile, if he was in an automobile?

A. It was beyond the building—

Q. Behind the building?

A. Yes, sir.

Q. Now, where was the lot then occupied by McBrayer and Hamel?

A. 808 Bell Street. Just beyond the GMC place.

Q. That is on the right hand side going out Bell Street?

A. Yes, sir. Going out Bell Street.

Q. Now, who was then operating that lot?

A. That was Mr. Hamel and Mr. McBrayer.

Q. And you saw this red-headed Government witness out there in an automobile, Hollis Bryant, and he wanted to see Mr. Hamel?

A. Yes, sir, he came to see Mr. Hamel.

Q. Was anyone with him, do you remember?

A. No, sir, there was no one with him.

Q. Did he see Mr. Hamel on that occasion?

A. I don't know, sir, I told him—

Q. Don't tell what you said now, were you there as a watchman or what was your job?

A. My job was mechanic.

Q. And you got to work about what time, that morning, if you recall?

A. We were opening up at 7:30.

Q. Did Mr. Bryant remain there on the lot, do you know?

A. No, sir. I don't know.

Q. You don't know how long he stayed?

A. No, sir.

Q. Did you see him leave?

Q. Do you know who was with him?

A. No, sir.

Q. Do you know what type automobile he was driving?

A. No, sir. I don't.

Q. Do you know what happened to the automobile he was driving?

A. No, sir. I don't. I was at work in the shop.

Q. That is all.

Cross Examination.

Mr. Varner:

Q. Now, this was after Mr. Hamel and Mr. McBrayer had moved from the lot they occupied with Mr. Herman Roberson, was it not?

A. Yes, sir.

Q. And Mr. Bryant did not see Mr. Hamel on that occasion?

A. I don't know, sir. I opened the office and the colored boy swept it out, and I opened the shop and I had a lot of work to do, and I told him Mr. Hamel would be there around 9:00 o'clock.

Q. Did you testify a moment ago that he left? That Mr. Bryant left there when you told him that?

A. I don't know what became of him, I was in the shop.

Q. You didn't see him again, then?

A. No, sir, I did not see him anymore after I seen him there that morning.

Q. Did he ask for anybody else?

A. No, sir. He asked where Mr. Hamel was.

Mr. Varner:

That is all.

The Court:

Call your next witness.

Mr. Fuller:

May we have a short recess, the man is in the Moore Building, and it won't take long to get him here, and we would like to keep our case in order.

The Court:

All right. Gentlemen, I ask you not to discuss this case and do not let anyone discuss it with you, or in your hearing. Court will be in recess for five minutes.

MISS LILLY JOE HAMMOND, being called as the next witness, being duly sworn, testified as follows:

Direct Examination.

Mr. Fuller:

Q. Are you Miss Hammond?

A. Yes.

Q. Miss Hammond, are you related to either Mr. or Mrs. Herman Roberson?

A. I am related to Mrs. Roberson.

Q. What is that relationship, please, mam.

A. First cousin.

Q. Back in the year 1953, in April or May, were you employed by Mr. and Mrs. Roberson at the used car lot here in Montgomery?

A. I was.

Q. And what did your duties consist of?

A. I wrote his bills of sale, when he sold a car, and I kept up with the money and made bank deposits, answered the telephone, just general office work.

Q. Where are you employed now, Miss Hammond?

A. At Burford-Toothaker Tractor Company.

Q. What employment do you have out there?

Mr. Davis:

I object.

The Court:
Sustained, unless it is material.

Mr. Fuller:
Miss Hammond, do you remember about when you started to work for Roberson Motor Company?
A. Sometime in 1952.
Q. And you continued to work with Roberson Motor Company until about, when?
A. It was the latter part of April or May, 1953.
Q. Let me ask you how were automobiles financed that Mr. Roberson purchased, in April or May of 1953, if you know?

Mr. Davis:
Object.

The Court:
I sustain that.

Mr. Fuller:
We would like to have an exception, Your Honor.

Q. I will ask you to state whether or not to your knowledge Mr. Roberson of the Roberson Motor Company was able to finance automobiles that were sold by that Company, through a financing concern here in Montgomery?

Mr. Davis:
We object.

The Court:
Sustained.

Mr. Fuller:
We would like to have an exception, Your Honor.

The Court:
What is your theory of it?

A. The theory of it is this, Your Honor, that we think we should be permitted to show how Mr. Roberson was carrying on his business during the period of time that these automobiles were involved. We think that it was his opportunity to finance automobiles, whether he had such opportunity is vital to the defense of this case.

The Court:
How?

A. It has been our understanding that the theory of the Government case is that Mr. Roberson was unable to finance any automobile.

The Court:
That comes later, this testimony may be material on sur-rebuttal, but is not here. I don't know what they are going to show, or to try to show, but you are anticipating some testimony?

A. Yes, sir. We would like to ask Miss Hammond to wait then, in the event it becomes necessary.

The Court:
All right.

Mr. Fuller:
Miss Hammond, we are going to have to ask you to wait, then. Your Honor, as I understand it at the

present time, a number of these other witnesses are here, whom we have called for the purpose of showing Mr. Roberson's ability—

The Court:
That may become material in the case, Mr. Foster, I don't see that it is at this point, as a defense on what may develop in the testimony.

Mr. Fuller:
Call Mr. Harvey Connor, please.

Marshal:
He does not answer the call.

Mr. Fuller:
We will call Bill Moses, then, please.

Mr. Fuller:
We call Mr. Bill Moses.

BILL MOSES, being duly sworn, testified as follows:

Direct Examination.

Mr. Fuller:
Q. You are Bill Moses?
A. Yes, sir.
Q. Mr. Moses, I will ask you what business you are in at the present time?
A. Automobile salesman.
Q. I will ask you if along in 1953 you were employed by Mr. Herman Roberson, the defendant in this case?

A. No, sir, not in 1953, it was about 1950 and 1951 I believe it was.

Q. I will ask you if, during the time you worked for Mr. Roberson, he had a standing rule of his business, that no automobile was to be purchased by you, or any one else, unless there was a full investigation made as to the ownership of the automobile, at time of the sale?

Mr. Davis:
I object.

The Court:
I sustain the objection.

Mr. Fuller:
I would like to have an exception. We excuse this witness.

The Court:
Call your next witness.

Mr. Fuller:
We would like to show on the record I guess we had better make a showing, if that would be permissible?

The Court:
It is not in issue in this case, what kind of rules he had in 1950 or 1951.

Mr. Fuller:
We think we could bring it on down to date, Your Honor.

The Court:
I will reconsider the matter if you bring it down to the date in question.

Mr. Fuller:
I don't think we could show that on the particular day that these offenses are alleged to have occurred he had a rule that nobody would buy an automobile, but we think it was a continuing and long time practice. We think this witness will so testify, that they were not to buy any questionable automobiles.

The Court:
This witness was not working for him in 1953. You asked him about that.

Mr. Fuller:
We think we could bring it on down to date. We didn't—

The Court:
I sustain the objection.

Mr. Fuller:
We would like to have an exception.

The Court:
It is not necessary to except in the Federal Court. The rules do not require it.

Mr. Fuller:
I am sorry, Your Honor.

MRS. HERMAN ROBERSON, being called as the next witness, being duly sworn, testified as follows:

Direct Examination.

Mr. Fuller:

(Your Honor referred to me as Mr. Foster, I do not suppose it would matter, or make any point on the record as to who made the objection on the record, if we could get that corrected, I would appreciate it. . .

The Court:

Let it be corrected.

Mr. Fuller:

Thank you.

Q. Is this Mrs. Herman Roberson?

A. Yes, sir.

Q. Mrs. Roberson, are you the wife of the defendant in this case?

A. Yes, sir.

Q. How long have you and Mr. Roberson been married.

A. About seventeen years, I think.

Q. What relationship is Bill Rhodes to you?

A. Brother-in-law.

Q. Bill Rhodes' wife is your sister is that correct?

A. Yes, sir.

Q. Where do you and Mr. Roberson live, Mrs. Roberson?

A. On Narrow Lane Road.

Q. About how long have you and Mr. Roberson been living here in Montgomery?

A. About fourteen years.

Q. I want to hand you a document here, that has been identified as the Defendant's Exhibit No. 6, and the same document which is a different photostat, identified as Defendant's Exhibit No. 10. I will ask you to look at these two documents, I believe you will see they are the same document, the photostats made at different times. I will ask you to state if that check bears your signature?

A. Yes, sir.

Q. And what is the amount of the check, Mrs. Roberson?

Mr. Davis:
Object.

The Court:
Overruled.

A. $2,000.00.

Q. And to whom is the check payable, Mr. Roberson?

A. To Bill Rhodes.

Q. And what is the date of the check?

A. June 8, 1953.

Q. And on what Bank is it drawn on, Mr. Roberson?

A. The Alabama National.

Q. What indorsement, if any, is on the corner of the check on the front?

A. Loan.

Q. And what indorsement appears on the back of that check?

A. Bill Rhodes.

Q. Is there any other indorsement on that check?

A. No, sir.

Q. Now, under what circumstances was that check issued, Mrs. Roberson?

A. I loaned Bill Rhodes $2,000.00.

Q. And what did you loan Bill Rhodes $2,000.00 for?

A. To buy a 1951 Cadillac.

Q. Do you know where the original check, of which that is a photostat, is?

A. No, sir. I pulled it out and I can't find it. I don't know what I did with it.

Q. I will ask you to state under what circumstances you first saw this paper marked as Government's Exhibit No. 1, which I now hand to you?

A. I notarized the paper.

Q. Does that bear your signature as a notary public?

A. Yes, sir.

Q. Your name is signed on there, how?

A. Doris B. Roberson.

Q. Is that your name?

A. Yes, sir.

Q. Now, what is that paper, who is it from, and who is it to?

A. It is signed by J. L. Newman, $2500.00, paid by Bill Rhodes, 51-50 Cadillac, Motor Number 516095134.

Q. I will ask you to state who was present at the time you notarized that paper. First, let me ask you whose hand-writing is on that paper, as far as the body of the paper is concerned and the motor number and all that, whose hand-writing is that?

A. It is mine.

Q. Who was present at the time that paper was signed Mr. Roberson?

A. Bill Rhodes and the gentleman that sold the car.

Q. Now, what happened following that, to your knowledge? Did either one or both of them leave or not?

A. When I gave Bill the check they left together.

Q. I will ask you if your husband, the defendant in this case, was present at the time that bill of sale was signed, and at the time you signed the check, the instrument referred to, being Government's Exhibit No. 1, the bill of sale and the Defendant's Exhibit No. 6 and No. 10?

A. No, sir.

Q. Where was Mr. Herman Roberson at the time these papers were signed?

A. In Cuthbert, Georgia.

Mr. Varner:

We object, unless she knows where he was.

Mr. Fuller:

I will ask the question this way: Was Mr. Roberson at home?

A. No, sir.

Q. I will ask you if he left to go anywhere?

A. He left to go to Georgia, Cuthbert, Georgia.

Q. Now, following the purchase of this Cadillac automobile, to your knowledge, what, if anything, did Bill Rhodes do with it?

A. Well, he kept the car from six to eight weeks, or maybe two months, I don't know, then he sold it.

Q. Now, where did he keep the car, from your own knowledge, not what someone told you, where did he keep that car?

A. Bill Rhodes had a grocery store on the corner of Seibles and Narrow Lane Road, in the corner. I took my baby to school every morning and I saw that car every day.

Q. And where was the car kept, could it or could it not be seen from the road?

A. It could be seen.

Q. Mrs. Roberson, I will ask you if you had or had not made other loans to Bill Rhodes?

Mr. Varner:
We object.

The Court:
Sustained.

Mr. Fuller:
I would like to have this document marked, identified as Defendant's Exhibit No. 11.

Q. Mrs. Roberson, I hand you this paper just identified as Defendant's Exhibit No. 11, and Defendant's Exhibit No. 12, and ask you what it is.

Mr. Varner:
We object.

The Court:
Let me see it. Overruled.

Mr. Fuller:
State what paper it is, just identified as Defendant's Exhibit No. 12, please?

A. It is a bill Herman paid on June 8th.

Mr. Davis:
We object, unless she knows whether he paid it or not.

The Court:
It is a bill, from whom?

A. Dr. Dickson.
Q. To whom?
A. Herman Roberson.

The Court:
All right.

Mr. Fuller:
Does it show whether or not the bill was paid, and if so, on what date?

Mr. Davis:
We object.

The Court:
Just a minute, Gentlemen, the bill itself is the best evidence, I sustain the objection.

Mr. Fuller:
Where did you get that bill in your possession?
A. Herman Roberson brought it to me.

Mr. Davis:
Object.

The Court:
Overruled.

Q. When did he bring it to you, Mrs. Roberson?
A. When he came back from Georgia.
Q. Is it in the same condition now, as it was in when you got it from the defendant in this case?
A. Yes, sir.
Q. Your Honor, I offer in evidence this exhibit which has been identified as Defendant's Exhibit 12.

Mr. Davis:
We object.

The Court:
It may be admitted a little later, in connection with this case, it probably has a probative value. It may become admissible later. I don't know.

Mr. Fuller:
Mrs. Roberson, as part of your duties back in 1953, did you keep the books and records of that concern?
A. Yes, sir.
Q. Did you keep records of what your husband spent, or paid out and didn't spend out?
A. Yes, sir.
Q. Is it customary for him to turn over receipts and payments to you?
A. Yes, sir.
Q. Was it customary at that time?

Mr. Davis:
We object.

The Court:
Overruled.

Mr Fuller:
And the defendant did turn this over to you?
A. Yes, sir.
Your witness.

Cross Examination.

Mr. Varner:

Q. Will you look at that please, mam, Defendant's Exhibit No. 6. You testified, I believe, that that was a check given by you to Bill Rhodes, is that correct?

A. Yes, sir.

Q. Who was with Mr. Rhodes when you gave it to him?

A. The gentleman who sold him the car.

Q. Will you describe that gentleman, please, mam, to the best of your ability?

A. He is tall and has wavy red hair.

Q. Do you now know him as Hollis Bryant?

A. Well, I have seen him here in the hall, he is the one.

Q. Ask Hollis Bryant to step in. (Mr. Bryant comes in.) Is that the man?

A. Yes.

Q. Who else was present at that time?

A. No one else.

Q. Did you see this witness, Hollis Bryant, only on one occasion?

A. Only one time.

Q. And Mr. Roberson was not there?

A. No, sir.

Q. Mr. Rhodes was there?

A. Yes, Mr. Rhodes was.

Q. No one else?

A. No one except the baby who was in the house.

Q. How old is she?

A. Eight years old now.

Q. That is all right. How long had you, yourself, been in the automobile business, Mrs. Roberson?

Mr. Fuller:
I object to how long she has been in the automobile business.

Mr. Varner:
Do you buy and sell automobiles?

Mr. Fuller:
I object to that, Your Honor, she is not on trial.

The Court:
I sustain that.

Mr. Varner:
Have you ever bought and sold automobiles?

Mr. Fuller:
I object.

The Court:
Sustained.

Mr. Varner:
May I explain our theory?

Mr. Fuller:
I object to any statement in the presence of the jury.

Mr. Varner:
What kind of automobile was that, that this red-headed man and Bill Rhodes brought out there?
A. A 51-60 Special Cadillac.
Q. What did you figure that Cadillac was worth?

Mr. Fuller:
I object.

The Court:
Sustained.

Mr. Varner:
Did you know what that automobile was worth?

Mr. Fuller:
I object.

The Court:
Sustained.

Mr. Varner:
Did you see that automobile?
A. Yes, I saw it.
Q. Did you look at the engine?
A. I don't recall that I did.
Q. Did they have any keys to that automobile?
A. I don't recall that. Bill Rhodes was buying the car, I was not buying it.
Q. Did they crank the car up in your presence?
A. They left there in the car.
Q. Did they crank it up in your presence?

Mr. Fuller:
We object to that.

The Court:
As I understand it this witness says she has loaned $2,000.00 on that automobile, I am going to permit the Government to interrogate her, to see what

examination she made of that automobile prior to the time she loaned that money, overrule your objection.

Mr. Varner:
Did they crank the automobile up?
A. Yes, sir.
Q. Was that prior to the time you had written that check, or subsequent to that time?
A. I heard the motor run before I let him have the money.
Q. Had Bill Rhodes ever been in the automobile business, to your knowledge?

Mr. Fuller:
I object.

The Court:
Overruled.

A. He had been in and out, he worked for us.
Q. Did he work for Herman?
A. Yes.
Q. In what capacity?
A. As salesman.
Q. Selling automobiles?
A. Yes, sir.
Q. When?
A. Off and on, since we have been in the automobile business.
Q. When, to your best knowledge?
A. Well, since he got out of service.
Q. Well, since he got out of service, hasn't he been disabled because of his mental trouble?
A. He hasn't been like that all the time. When he first got out of service he was in the grocery business.
Q. If he testified he has—

Mr. Fuller:
Your Honor, he did not let her finish her question. He asked her what Bill Rhodes had done. We would like for her to finish.

Mr. Varner:
I am sorry. Go ahead.

Mr. Fuller:
Go ahead and tell what you know about Bill Rhodes, Mrs. Roberson, please.

The Court:
I sustain the objection to your interrupting the witness.

Mr. Varner:
I am sorry. My thought was that she was through about the time I started my question.

The Court:
All right, lets get along.

Mr. Varner:
If Mr. Rhodes testified on the stand that he had been drawing disability for a nervous trouble since he got out of service, he is mistaken, then?

Mr. Fuller:
I object.

The Court:
Sustain that.

Mr. Varner:

You testify that you loaned Bill Rhodes $2,000.00 on this Cadillac when Herman was not present?

A. Yes, sir.

Q. And did you drive that Cadillac at all?

A. No, I didn't drive it.

Q. Did you ride in it?

A. No, sir.

That is all.

WALTER HERMAN ROBERSON, being called as a witness, being duly sworn, testified as follows:

Direct Examination.

Mr. Fuller:

Q. Is this Mr. Walter Herman Roberson?

A. Yes, sir.

Q. Is this your father who is the defendant in this case?

A. Yes, sir.

Q. Did you see the witness who has just testified through the door?

A. No, sir.

Q. Well, the present Mrs. Roberson, is your stepmother, is she not?

A. That is right.

Q. Now, Mr. Roberson, I will ask you if during March or April of 1953, if you, yourself, delivered a 1948 Chevrolet automobile to Mr. Ina Thaggard at or near Rutledge, Alabama?

A. I did.

Q. Will you tell this jury, what, if anything, you received from Mr. Thaggard when you delivered the car to him?

Mr. Davis:
Object.

The Court:
Overruled.

A. I got pay for the car.
Q. Do you recall the amount of money, Mr. Roberson?
A. About $600.00 I believe.
Q. Now, do you know whether or not that was in cash or in checks, or in what form was it?
A. Well, it was cash and checks, I don't remember just how it was.
Q. Now, Mr. Roberson, what, if anything, did you do with the money you collected for that Chevrolet automobile from Mr. Thaggard at Rutledge, Alabama, on the occasion you have testified about?

Mr. Davis:
Object.

The Court:
Overruled.

A. Well, I brought the money back to Montgomery, I gave it to Mr. Jack Hamel.
Q. All right, sir. Your witness.

Cross Examination.

Mr. Varner:
Q. You are the son of this defendant?
A. That is right.
That is all.

The Court:
Next witness.

HERMAN ROBERSON, being called as a witness, in his own behalf, testified as follows:

Direct Examination.

Mr. Fuller:
Q. Is this Mr. Herman Roberson?
A. Yes, sir.
Q. You are the defendant in this case?
A. Yes, sir.
Q. Mr. Roberson, I will ask you to state under what circumstances the two men known as Hayden McBrayer and Jack Hamel came into possession of your used car lot, if you know, back in the year of 1953?

Mr. Davis:
Object.

The Court:
Overruled.

A. They got it from Mr. Earl Mosley, he had a lease on it, and they made some kind of a deal with them, and went on the lot.
Q. Did you have in existence at that time, a written lease with anyone on your used car lot?
A. Yes, sir.
Q. Who did you have this written lease with?
A. Mr. Earl Mosley.

Q. What, if anything, did Mr. Earl Mosley do with that property while he had it?

Mr. Varner:
Object, repetitious.

The Court:
I will let him testify to that.

Mr. Fuller:
What did Mr. Earl Mosley do, if anything, with reference to your used car lot, in so far as McBrayer and Hamel is concerned?

A. He let them, I guess he rented it to them, or leased it to them. I don't know, anyway they were on the lot.

Q. Did you give any permission for McBrayer and Hamel to get on your used car lot?

A. No, sir.

Q. What did you do about getting rid of McBrayer and Hamel, if anything?

A. I gave them a 30 day notice to move. Mr. Mosley and them together, they didn't have a lease on it, by me. So I gave them a 30-day notice.

Q. Now, along about the first of April, 1953, I will ask you if you had any trouble with either McBrayer, or Hamel, about a check?

Mr. Davis:
We object.

The Court:
Does it concern one of the transactions that we are interested in?

Mr. Fuller:

It is an occurance that took place, right along about the time of these transactions, Your Honor.

The Court:

You can ask him if there was any ill feeling. I don't know that in competent evidence. You are anticipating that McBrayer and Hamel are going to testify to certain things. I am going to sustain the objection to it

Mr. Fuller:

I will ask you if McBrayer and Hamel gave you a check drawn on the First National Bank of Montgomery, in the sum of $2,390.00, which was returned by the bank marked insufficient funds?

Mr. Davis:

We object.

The Court:

Sustain the objection.

Mr. Fuller:

Mr. Roberson, what notice did you give McBrayer and Hamel to move off of your lot, if you gave them a notice to move off?

A. I gave them a 30-day notice.

Q. Now, did this man, who has now been identified in this Court as Hollis Bryant, come to the McBrayer and Hamel used car lot, in March of 1953, to your knowledge, while you were there?

A. Yes, sir, one time.

Q. Now, at the time Hollis Bryant came to the McBrayer-Hamel used car lot in March of 1953, what sign was on the lot, Mr. Roberson?

A. McBrayer and Hamel Motors.

Q. Now, what conversation, if any, took place in your presence, that you can recall, between either you and Bryant, or Hamel, or McBrayer, and Bryant, on that occasion, that you have said you were present at? In other words, what took place there at that time?

A. That first time?

Q. Yes, sir.

A. He wanted to sell a 1948 Chevrolet.

Q. Who is "he?"

A. Hollis Bryant, the red-headed man, I know him now, I did not know him at that time by name.

Q. You said he wanted to do what?

A. He wanted to sell a couple of cars, old model cars.

Q. Did he have one with him?

A. Yes, sir. There was one parked a little ways down the street about middle ways on the block.

Q. Do you recall whether or not he came up to you, or you came up to him, or how did McBrayer and Hamel get into the conversation, if they got into it?

A. I met this guy in the gate.

Q. Who is he?

A. Bryant. He started talking and wanted to sell a couple of old model cars. I told him I was temporaily out of the car business, Mr. Jack Hamel and Mr. McBrayer had the lot leased, that they might buy the car.

Q. Did you refer him to McBrayer and Hamel?

A. Yes, sir. About the time I started talking to him Hamel walked up. I turned him over to Mr. Hamel and Mr. Hamel done the talking and looking at the car.

Q. Now, did you lend any money to either McBrayer or Hamel on this occasion, if so, how much, and what did you lend it to them for?

A. I lent Jack Hamel either $300.00 or $350.00 to buy the car with.

Q. Did you buy the 1948 Chevrolet automobile yourself?

A. No, sir.

Q. Now, what happened to the Chevrolet automobile after it was purchased on this occasion? Where was it kept?

A. It was kept on the lot.

Q. Was it covered up or hidden any way?

A. No, sir.

Q. What, if anything, did you do about selling that 1948 Chevrolet automobile?

A. I showed it to Mr. Thaggard.

Q. Is that Mr. Ina Thaggard?

A. Yes, Mr. Ina Thaggard.

Q. Just tell what took place at the time you showed that car to Mr. Thaggard?

A. Well, I just told Mr. Thaggard that they had some cars, and also, I had two or three old model cars, that he might buy or trade in. I showed him two or three of mine and he looked at the 1948 model Chevrolet and he wanted to know about it, so I told him it belonged to Hamel and McBrayer.

Q. Now, did Mr. Hamel and Mr. McBrayer, both, come up there during the negotiation that you were having with Mr. Ina Thaggard?

A. Mr. Jack Hamel talked to Mr. Thaggard.

Q. Did Mr. Hamel say or do anything there in your presence that you can recall, on that particular automobile on that particular occasion?

A. Oh, they just talked to him and I think refused the price that Mr. Thaggard offered for it.

Q. Do you know what Mr. Thaggard offered for the car?

A. I believe it was $800.00 he offered for the car, and Hamel wanted $850.00 and I left them talking. Later on Mr. Hamel decided to take the $800.00 and sent the car to him.

Q. You heard your son, Walter Herman, testify about taking the automobile to Mr. Thaggard, did you not?

A. Yes, sir.

Q. Did you, or did you not, go with him to deliver the automobile to Mr. Thaggard?

A. No, sir.

Q. Now, the Oldsmobile, were you present at the McBrayer-Hamel used car lot, here in Montgomery, along about April of 1953, when this man Hollis Bryant sold a 1950 model Oldsmobile, were you present when Hollis Bryant came there with a 1950 model Oldsmobile?

A. No, sir.

Q. All right, sir. Did you arrive there at the lot, and how did you come to arrive?

A. I come down to the lot, I did that when Mr. Jack Hamel called me. He asked me to come down and lend him some money to buy a car.

Q. Well, did you lend him any money to buy the Oldsmobile with?

A. Yes, sir.

Q. Do you remember what you loaned him to buy it with?

A. Well, it was either $700.00 or $900.00. I believe it was $900.00 I lent him to buy it with. I won't be sure on it, it was either $700.00 or $900.00.

Q. Did you sell that Oldsmobile?

A. No, sir.

Q. You heard the testimony of Sgt. Roberts, here in this court room, did you not?

A. Yes, sir.

Q. Now, what about the Cadillac, Mr. Roberson, did you purchase the Cadillac automobile? The 1951 Cadillac?

A. No, sir. I did not purchase that at all.

Q. Were you present when Bryant came to your home, if he did come to your home, and sold this 1951 Cadillac automobile?

A. No, sir. I was not there.

Q. Can you tell this jury where you were, if you know, on that occasion, have you made an effort to check through your records to determine where you were on that occasion?

A. Yes, sir. I was in Georgia.

Q. I will ask you to look at this document, that has been marked for identification as Defendant's Exhibit No. 12, I will ask you to state how that document came into your possession?

A. I got it when I paid Dr. Dickerson a bill for doctoring my cow.

Q. In what form did you make payment to Dr. Dickerson, Mr. Roberson?

A. Cash. I gave him cash.

Q. And where did you make the payment, Mr. Roberson?

A. Over in Cuthbert, Georgia, on the farm.

Q. What date did you make that payment?

A. On June 8, 1953.

Mr. Fuller:

Your Honor, I want to offer this in evidence.

The Court:

I will admit it now.

Mr. Fuller:

Now, Mr. Roberson, what kind of a bank account did you and Mrs. Roberson maintain in the Alabama National Bank, that is, with reference to one or both of you signing checks back in June of 1953?

A. A joint account.

Q. Now, what do you mean by a joint bank account?

A. Well, either one of us could check the money out. Either one of us could write checks on it.

Q. Now, on this Cadillac automobile, Mr. Roberson, after it was purchased, did you see Bill Rhodes with a Cadillac automobile when you returned to Montgomery?

A. Yes, sir. I saw him.

Q. Where did Bill Rhodes keep the Cadillac automobile, Mr. Roberson?

A. In his yard.

Q. With reference to the highway intersection, can you tell what two roads run together adjoining the Bill Rhodes place of business at that time?

A. Yes, sir. It was Fleming and Narrow Lane Road.

Q. To refresh your recollection it is Seibles Road, isn't it?

A. The Seibles Road runs into Narrow Lane Road.

Q. Is that just cater-cornered from Narrow Lane Inn, here in Montgomery?

A. Yes, sir.

Q. Would any automobile parked at that location, be open to view of the public, or not, from the high way?

A. Almost in the road.

Q. Now, Mr. Roberson, it was testified here, that a Mr. C. M. Neal, who was working for the Roberson Motor Company, sold that Cadillac automobile to a

Major Joye, as a salesman for the Roberson Motor Company, will you tell the jury under what circumstances Mr. C. M. Neal came to sell that particular Cadillac automobile, if he did sell it?

A. He just helped Rhodes. Rhodes had the car there, or he called Rhodes and told him.

Mr. Varner:

We object.

The Court:

I sustain that.

Mr. Fuller:

Well, were you present when the automobile was sold, Mr. Roberson?

A. No.

Q. Did you sign any bill of sale on the Cadillac automobile?

A. No, sir.

Q. Mr. Roberson, did you sign any bill of sale, to anyone of the three automobiles involved in this case?

A. No, sir.

Q. I will ask you, if to your knowledge, you know what happened to two of the bills of sale. Now, we have here in evidence the document which has been identified as the Government's Exhibit No. 1, being a bill of sale to Bill Rhodes, other than that we have no bills of sale into any one from Hollis Bryant, as to the Chevrolet and Oldsmobile. Do you know what happened to the bills of sale to the 43 Chevrolet and to the 50 model Oldsmobile?

Mr. Varner:

We object to the narrative.

The Court:
Sustained to the question in that form.

Mr Fuller:
Mr. Roberson, I will ask you, if you know what became of the bills of sale to the 1948 Chevrolet and the 1950 Oldsmobile, as coming out of Hollis Bryant? Do you know what happened to those bills of sale?

A. No, sir. I don't.

Q. Do you know who had them, the last time you saw those bills of sale?

A. Mr. Jack Hamel had them.

Q. Now, when Mr. Ina Thaggard came up here to see about his automobile, when he found out it had been stolen, I will ask you to state whether or not, you and Mr. Jack Hamel or you and Mr. Ina Thaggard, went to see Mr. Jack Hamel about the car?

A. Yes, sir, we went by there.

Q. What, if anything, did Mr. Jack Hamel say on that occasion, Mr. Roberson?

A. Well I tried to get him to—

Mr. Davis:
We object to what he tried to get him to do.

Mr. Fuller:
Just tell as well as you can remember what Mr Jack Hamel said, when you and Mr. Ina Thaggard went there, after Ina Thaggard found out the car had been stolen?

A. He said he couldn't pay for the car, Mr. McBrayer had run off with the money, he had sold a bunch of cars and had run off with the money, and he was all tied up, hands and feet, he could not pay him, there was nothing he could do about it, right then.

Q. Now, present on that occasion, was who?
A. Ina Thaggard.
Q. And who else?
A. Jack Hamel.
Q. And yourself?
A. Yes, sir.
Q. Who left the used car lot up there, known as McBrayer Motors in company with Hollis Bryant on both of the occasions, when the Oldsmobile and the Chevrolet was sold, who took them away from there, if you know?
A. Jack Hamel.
Q. Did you see him, Mr. Roberson?
A. Yes, sir.
Q. You are positive it was Jack Hamel?
A. I am positive I saw him leave there with them. He was driving the car.
Your witness.

Cross Examination.

Mr. Davis:
Q. You know Dr. C. R. Dickson, do you not?
A. Yes, sir.
Q. You brought him here as a witness in this case on the former trial, didn't you?
A. Yes, sir.
Q. You were sitting right there at the same table with your lawyer, at the former trial, were you not?
A. Yes, sir.
Q. Did you hear Mr. Fuller ask him this question: "I will ask you if you were requested to check your records—

Mr. Fuller:
Just a minute, I am going to object, Your Honor, unless he is going to offer all of Dr. Dickerson's testimony.

The Court:
Whether this man heard it or didn't hear it hasn't got anything to do with it.

Mr. Davis:
I will offer all of the testimony, I will read it into the record now.

The Court:
If you Gentlemen want to stipulate that Dr. Dickerson would, if he were here, testify to certain matters in this case. I will let you do that. But I won't admit the testimony of any witness, who testified here before, in that form.

Mr. Fuller:
Your Honor, we are perfectly willing to stipulate that that book contains the entire and correct testimony of Dr. Dickson on the last trial in this case.

The Court:
Well, how is it pertinent or material now?

Mr. Davis:
It is very pertinent.

Mr. Varner:
Do I understand it is submitted by stipulation?

Mr. Fuller:

We admit that is his testimony on the last trial as contained in this book.

The Court:

You Gentlemen might get out here and stipulate that the sky is blue, but I am not going to admit it unless it is pertinent and material in the trial of this case.

Mr. Davis:

Mr. Roberson, you were present when Hollis Bryant testified here Saturday a week ago, before this case was continued on account of the Judge's illness, were you not?

A. Yes, sir.

Q. You heard Hollis Bryant testify that he brought that 1948 Chevrolet into that lot and talked to you?

Mr. Fuller:

I object.

The Court:

I sustain that, as to whether he heard him or not. That is not in issue in this case.

Mr. Davis:

Did he testify to that in your presence?

Mr. Fuller:

I object

The Court:

Sustained.

Mr. Davis:
Did you hear Mr. Hollis Bryant testify in the case?

Mr. Fuller:
I object.

The Court:
Well, I overrule that, whether you heard him testify in this case.

Mr. Fuller:
I object.

Mr. Davis:
Can you tell this jury any reason that he could come into this court room and testify falsely against you?

Mr. Fuller:
I object.

The Court:
Overruled.

A. Well, I couldn't say, no, sir.

Q. Did you hear Miss Vernita Y. Philyaw testify in this case on Saturday, a week ago?

A. Yes, sir.

Q. Can you give to this jury any reason that she should come into this court room and testify falsely against you?

Mr. Fuller:
I object.

The Court:
Overruled.

A No, sir. I couldn't give any reason unless it was on account of Hamel and McBrayer.
Q. You know of no reason?
A. Unless they got them to do it, or paid them or did something for them in return for it. They did notarize a bill of sale for them.
Q. Did you see it done?
A. No, sir.
Q. You don't know that, do you?
A. No, sir. They admitted it, though.

Mr. Fuller:
I object.

The Court:
Sustained.

Mr. Fuller:
I would like for the Court to instruct the jury to disregard that.

The Court:
I don't think that will be necessary at this time.

Mr. Davis:
Tell me this, did you go—did you lend Bill Rhodes $2,000.00 to purchase a 1951 Cadillac, about June 8, 1953, from Hollis Bryant?

Mr. Fuller:
I object.

The Court:
Overruled

A. No, I didn't lend it to him. My wife lent it to him.
Q. Were you present?
A. No, sir.
Q. If the Court please, instruct this witness not to answer unless he knows. Now, did you on or about August 19, 1954, tell Mr. Spencer Robb, Special Agent of the F.B.I. and Mr. Myron Turner, Special Agent of the F.B.I. this gentleman sitting right there, in Montgomery, Alabama, when just you three were present, this or this in substance: "I lent Bill Rhodes $2,000.00 in June of 1953, to buy a 1951 Cadillac," Did you?

Mr. Fuller:
I object.

The Court:
Overruled.

Mr Davis:
Did you?
A. No, sir.
Q. Did you go to the office on December 9, 1953, the office of Mr. Harold McGlynn, with Mr. Dave Rainey to pay for the 1951 Cadillac that you sold to Major Joye, and gave a bill of sale made to Bill Rhodes from McBrayer, Haigler & McGlynn, Insurance Adjustor on that 1951 Cadillac?

Mr. Fuller:
I object.

The Court:
What theory do you—

Mr Davis:
To show that Mr. Roberson was the man who was interested in paying for the Cadillac.

Mr. Fuller:
I object.

Mr. Davis:
And he went there to pay for it, and did pay for it when it was finally sold.

Mr. Fuller:
I object for Counsel to testify and ask the jury be instructed to disregard it, that is highly prejudicial Mr. Davis knows it is, and he can't prove it.

Mr. Davis:
I can prove it.

The Court:
Now, Gentlemen, this applies to both of you, you know that is not proper, now, Gentlemen you will not consider any remarks made by counsel in this case as evidence. When the Court asks the Government or Counsel for the defendant what the theory is, it is to enable the Court to intelligently rule on certain objections or motions that might be pending at that time. It is not for the purpose of counsel using that to get evidence in, or prejudice, or one way or the other. You all will not consider that in connection with the guilt or innocence of this defendant. Let's proceed. I sustain the objection to your question in that form.

Mr. Davis:
Did you go to the office of Mr. Harold McGlynn, here in Montgomery, Alabama, on or about December 9, 1953?

Mr. Fuller:
I object

The Court:
Overruled.

A. I went to his office one time, the date I don't remember, with Bill Rhodes.
Q. Did you go with Dave Rainey, to the office of Mr. Harold McGlynn, on or about December 9, 1953, to pay for the 1951 Cadillac, that was sold to Major Joye?

Mr. Fuller:
I object.

The Court:
Overruled
A. No.

Mr. Davis:
Did you get from Mr. Harold McGlynn, of the firm of McPhail, Haigler and McGlynn, Insurance Adjustors of Montgomery, a bill of sale, made to Bill Rhodes on that 1951 Cadillac on that occasion?

Mr. Fuller:
I object

Mr. Davis:
Did you buy the 1948 Chevrolet involved in this case?

Mr. Fuller:
I object.

The Court:
Overruled.

A. No, sir.

Mr. Davis:
Did you lend money on that Chevrolet?
A I lent Hamel the money to buy it with.
Q. Did you get a mortgage from him?
A. I don't recall.
Q. Did you buy the 1950 model Oldsmobile from Hollis Bryant that is involved in this case?
A. I did not.
Q. Did you lend money on that 1950 model Olds?
A I lent money to Hamel to buy it with.
Q. Did you sell this 1948 model Chevrolet involved in this case?
A. I helped negotiate the sale for Hamel.
Q. Did your son deliver the 1948 model Chevrolet involved in this case, to Ina Thaggard?
A. He testified he did.
Q. Did you know he left here with it to go down there?
A I was not there when he left.
Q. Did you sell the 1950 model Oldsmobile involved in this case, to Norman Hatchett?
A. No, sir.

Q. You know Norman Hatchett, do you not?
A. Yes.
Q. Did you sell him that 1950 model Oldsmobile?

Mr Fuller:
Your Honor, I object to this line of questioning. When we had Mr. Barnett on the stand, the Court would not permit me to question Mr. Barnett as to his records and sale of the two cars involved with Norman Hatchett. And I don't believe that this is in rebuttal to anything. We never were permitted to go into that with Mr. Barnett.

The Court:
I believe Mr. Barnett testified that the automobile was sold to Norman Hatchett first, and later sold to Sgt. Roberts, that is what I took down while he was testifying. Where does your statement come into justification that I would not permit Mr. Barnett to testify on that?

Mr. Fuller:
I then asked him about another automobile and at that point Your Honor cut off the examination of Mr. Barnett.

The Court:
This is interrogation involving the 1950 Oldsmobile, and that is what I understood him to testify to.

Mr. Fuller:
I then asked him about the Pontiac automobile and it was at that point Your Honor said that was rebuttal testimony.

The Court:
I don't remember saying that. All right. Let's proceed.

Mr. Davis:
Did Norman Hatchett bring that 1950 Oldsmobile back to you?
A. No, sir.
Q. And didn't you take the 50 model Oldsmobile back and sell him a 1950 model Cadillac that belonged to your sister?

Mr. Fuller:
I object.

The Court:
Sustained.

Mr. Davis:
A 1950 Pontiac?

Mr. Fuller:
I object.

Mr. Davis:
Did you buy a 1951 model Cadillac automobile from Hollis Bryant involved in this case?
A. No, sir.
Q. Did you lend money on that 1951 model Cadillac automobile?
A. My wife did, I did not.
Q. What is your name?
A. Herman Roberson.
Q. What name is this, on this mortgage?

Mr. Fuller:
Your Honor, I object, unless counsel will identify what document he is talking about.

Mr. Davis:
This is Government's Exhibit No. 1.

Mr. Fuller:
I should object, that couldn't be Government's Exhibit No. 1. The bill of sale to Bill Rhodes is Government's Exhibit No. 1.

Mr. Davis:
Is this a short chattel mortgage?

The Court:
I sustain the objection.

Mr. Davis:
Is this Bill Rhodes signature?
A. I think so.
Q. Do you know it?
A. I think I would.
Q. Is this chattel mortgage a short chattel note mortgage?
A. Yes.
Q. To whom is it made?

Mr. Fuller:
I object, unless it is identified as to which document it is. The record won't show a thing other than some mortgage.

The Court:
Has it been marked for identification?

Mr. Davis:
I understood that it had, but I can't find which one it is.

The Court:
It says Defendant's Exhibit No. 7.

Mr. Davis:
Defendant's Exhibit No. 7. Thank you, Your Honor I see it on the front. I was looking on the back. Looking at Defendant's Exhibit No. 7, introduced by you, will you tell me if this is up here at the top, is a note for $2,000.00 signed from Bill Rhodes to Herman Roberson due the 1st day of September, 1953?

Mr. Fuller:
Judge, Your Honor, that instrument is in evidence and it is the best evidence of what it is, I object.

The Court:
I sustain that.

Mr. Davis:
Did you receive a mortgage on a 1951 Cadillac, 60, Special, motor No. 516095134?

Mr. Fuller:
I object.

The Court:
Overruled.

A. Did I ever receive the mortgage?

Mr. Davis:
Yes, sir.
A. I guess that I did.
Q. Did you receive this mortgage?
A. I don't remember, my wife took the mortgage.
Q. It is made out to you.
A. Yes.
Q. Did you testify that you didn't lend money on this 1950 Cadillac Automobile, is that correct?

Mr. Fuller:
I object.

The Court:
Overruled.

A. You asked if I did myself, I didn't state that I did, no, sir.
Q. Is that the correct style of that account, Mr. or Mrs. Herman Roberson, Narrow Lane Road, Montgomery, Alabama?

Mr. Fuller:
I object.

The Court:
Overruled.

A. That is correct.

Mr. Davis:
This $2,000.00 item here on June 8, 1953, do you see that?
A. Yes.

Q. Is that, in your judgment, this check here, this $2,000.00 check, that is signed Mrs. Herman Roberson?

A. Yes, sir.

Q. It was charged up against your account, wasn't it?

A. Yes, sir.

Mr. Fuller:

Now, I object to that, the account is in both names, Your Honor, and the check speaks for itself.

The Court:

I overrule that.

Mr. Davis:

Did C. M. Neal work for you in June or July, of 1953?

A. Yes, sir.

Q. He worked at Herman Roberson Motors, didn't he?

A. Roberson Motor Company.

Q. And did he sell this 1951 Cadillac in July of 1953?

A. Well, I was not there, I couldn't say that he did or didn't. I think he did, though.

Q. Did you instruct him to sell it?

A. No, I didn't instruct him to do anything.

Q. And did you get the proceeds from the sale of that Cadillac?

A. The Motor Company did if it was done.

Q. Now, the Motor Company received $2,000.00 and $100.00 on the sale of that car on August 11, 1953?

Mr. Fuller:
Your Honor, I object to the attorney not identifying the exhibits in question.

The Court:
He is not asking him about any exhibit. He is asking him if the motor company received that money as I understand his question.

Mr. Fuller:
We object on the ground that the receipt is the best evidence. He is not identifying what he shows.

The Court:
Overruled. Ask him the question again.

Mr. Davis:
Did the Motor Company receive some $2,000.00 and then $100.00 as to the sale of this 1951 Cadillac?
A. From whom?

Mr. Davis:
Bill Rhodes.

A. Yes, sir.
Q. And that was the money received for that 1951 Cadillac?
A. It was received from Bill Rhodes, I don't know where he got it.
Q. Didn't you testify here, on the former trial of this case, that you heard Norman Hatchett testify that you sold him the 50 Oldsmobile?

Mr. Fuller:
I object.

The Court:
What is the basis for your objection?

Mr. Fuller:
The form of the question, Your Honor.

The Court:
What form is it that you object to?

Mr. Fuller:
He is asking him if he didn't testify on the former trial, as to a matter that he is trying to impeach him on, I don't know what else. It is on an immaterial matter in this case.

The Court:
As to whether or not he sold the Oldsmobile?

A. Yes, sir.

The Court:
Overrule your objection.

Mr. Roberson:
I didn't understand the question.

Mr. Davis:
Did you hear Norman Hatchett testify on the former trial of this case, that you sold him the 1950 Oldsmobile?

Mr. Fuller:
I object.

The Court:
Overrule your objection.

Mr. Fuller:
Your Honor, I would like to renew my objection.

The Court:
I don't mean to cut you off from objecting. I just don't want you to object to the same question, after I rule on it.

Mr. Fuller:
I might be mistaken, Your Honor, I understand the Court of Appeals requires that if a question is asked again, if I don't object, they think my objection is waived.

The Court:
That is correct.

Mr. Fuller:
Then I don't want to interrupt the Court.

The Court:
That is all right. I want you to protect your client and protect your record.

He is asking now if—ask him that question again.

Mr. Davis:
Did you hear Norman Hatchett testify on the former trial of this case, that you sold him the 1950 Oldsmobile?

Mr. Fuller:
I object.

The Court:
I sustain it.

Mr. Davis:
Did you testify on the former trial of this case that you heard Norman Hatchett testify that you sold him the 1950 Oldsmobile?

Mr. Fuller:
I object.

The Court:
Overruled.

A. I don't remember.

Mr. Davis:
Well, I will read you from the testimony in the former case, to refresh your recollection.

Mr. Fuller:
I object to counsel reading from the record in the former case.

The Court:
You might ask him a question for the purpose of refreshing his recollection.

Mr. Davis:
For the purpose of refreshing your recollection, was this question asked you—"Well, he didn't know which car you were talking about." Did you reply: No, the

question asked you was: "Did you hear him testify that you sold him the 1950 Oldsmobile?" And didn't you answer: "I heard him, but that is not what he meant."

A. I probably did.
Q. Well, is that true?
A. I guess so.
Q. In March of 1953, how many cars did you have in the lot of McBrayer and Hamel Motors?

Mr. Fuller:
Now, I object. We have not been permitted to go in and show his business operations.

The Court:
Sustained.

If Your Honor please, I would like to state that he has just said he was not in business at that time, and I would like to show how many cars he had on the lot at that time, to show he was in business at the very time these transactions were taking place.

Mr. Fuller:
I object to statement of counsel in the presence of this jury. Ask the jury to disregard it.

The Court:
You Gentlemen, won't consider statement by counsel for either side during the course of this trial. I am not going to get off into all these little old side and insignificant issues and get bogged down in this thing.

Mr. Davis:

You stated you testified on the last examination that Hollis Bryant told you he had a couple of old cars he wanted to sell when he came there to the lot. Is that correct?

A. Yes, sir.

Q. How many cars did he bring to the lot?

A. Two, I think.

Q. He brought two at that time?

A. Yes.

Q. How long apart were they?

A. I don't remember, a week or ten days. Just a few days apart. I don't remember just how many days.

Q. Now, didn't you tell Hollis Bryant that you were not going to buy those cars, that you weren't in business at that time?

Mr. Fuller:

I object.

The Court:

Overruled.

A. I told him that I didn't have a lot, and that McBrayer and Hamel had that lot, and that I was not buying that old stuff, cheap cars, anyway.

Q. You weren't in business at that time, didn't you tell him that?

A. I told him I didn't have a lot. I didn't say I was not in business, I didn't buy and sell cars, whether I was in business or not.

Q. You did testify on direct examination that you told him that, didn't you?

Mr. Fuller:
I object.

The Court:
Sustained.

Mr. Davis:
Didn't you tell him on direct examination, didn't you testify on direct examination that you told Hollis Bryant that you were not going to buy that car, that you were not in business?

A. I told him that I didn't buy that old stuff, Hamel had the lot and they might buy it.

Q. Were you in business at that time? In the automobile business?

A. Well, I was and I wasn't, you know.

Q. You and Walter Herman were working at the lot, weren't you?

A. Who?

Q. Your son, Walter Herman Roberson, and he delivered this Chevrolet down to Brantley, didn't he?

Mr. Fuller:
He has asked him that same question three times, I object.

The Court:
I am going to sustain it.

Mr. Davis:
Cameron Neal was working for you at that time wasn't he?

Mr. Fuller:
I object to that, that has been over three times.

The Court:
Overruled.

Mr. Davis:
Cameron Neal was working for you?
A. Yes, sir.
Q. And your wife was working for you, at that time, wasn't she?

Mr. Fuller:
I object.

The Court:
I overrule that.

A. She worked up there, she took care of the office work.
Q. Now, in 1941, on the 28th day of April, were you convicted of distilling and did you receive a sentence of three years?

Mr. Fuller:
I object and ask the jury to disregard it.

The Court:
Sustain the objection. Gentlemen, you will not consider that in connection with your deliberations in this case.

Mr. Fuller:
I ask Your Honor to declare a mistrial on the statement that counsel knew that was not proper.

The Court:
Gentlemen, let me instruct you, you are not to consider that in connection with your deliberations in this case. Any question that is asked if the Court

sustains the objection to it, is not competent evidence. Is there any member on this jury that feels that he cannot put that out of his mind, and not consider it in connection with determining the guilt or innocence of this defendant?—Motion is overruled.

Mr. Davis:
That is all.

Re-Direct Examination.

Mr. Fuller:
Mr. Roberson, the Roberson Motor Company has been incorporated, at one time, hasn't it?

A. Yes, sir.

Q. And following the dissolution of the corporation, how was the paper handled with respect to mortgages made to Roberson Motor Co., or to Herman Roberson?

Mr. Davis:
We object.

The Court:
Overruled.

Mr. Fuller:
Your Honor, Mr. Davis questioned Mr. Roberson about our Exhibit No. 7, the mortgage made to Herman Roberson, and my purpose in asking him about that was that actually all their papers were made in that manner, after the dissolution of the corporation.

The Court:
All right.

Q. Would you answer please, Mr. Roberson.

A. The mortgages were all made to Herman Roberson. It was not just that particular one, they were all made that way.

Mr. Fuller:

All right, that is all.

Mr. Davis:

Now, I will ask you this question: On April 28, 1941, were you convicted of

The Court:

Come around here, please. (Off the record.)

Mr. Fuller:

If Your Honor, please, I would like the jury instructed to disregard the first part of Mr. Davis' question.

The Court:

I don't think I let him get far enough along to where I have to instruct them.

Mr. Davis:

That is all.

The Court:

Gentlemen, I am going to recess for lunch until 1:30 P. M. You will not form any opinion as to the guilt or innocence of this defendant; the case is not submitted to you for your deliberations yet, it is not concluded. Don't discuss the case between yourselves, do not permit anyone to discuss it with you or discuss it where you can hear it in any way. If

any one violates or attempts to violate that rule, I will expect you to call it to my attention immediately before the Court reconvenes. Court will be in recess until 1:30 P. M.

Thereupon Court was adjourned for lunch and reconvened at 1:30 P. M.

Mr. Fuller:
The defendant rests, Your Honor.

The Court:
Any rebuttal?

Mr. Davis:
Yes, sir. We ask Mr. Hamel to take the stand.

MR. JACK HAMEL, called as a witness, being duly sworn, testified as follows:

Direct Examination.

Mr. Davis:
Q. What is your name?
A. Jack Hamel.
Q. Mr. Hamel, do you know the defendant, Mr. Herman Roberson?
A. Yes, sir.
Q. Did you know him in March of 1953?
A. Yes, sir.
Q. Mr. Hamel, have you seen Hollis Bryant in here?
A. Yes, sir.
Q. Have you seen him here today?

A. Yes, sir.
Q. When was the first time you saw Mr. Bryant?
A. Well, it was at the time that Mr. McBrayer and I were in business on the lot. I can't remember what day it was.
Q. Who was he with?
A. He was with a lady.
Q. Did you see him with anyone else?
A. No, sir.
Q. After he got to the lot?
A. Yes, I saw him talking to Mr. Roberson.
Q. Did you meet him on that occasion?
A. Just casually.
Q. What did he come there in?
A. A Chevrolet.
Q. Do you remember the year?
A. I think it was a 1948 model.
Q. Did you buy that 1948 Chevrolet from him?

Mr. Fuller:
We object.

The Court:
Don't lead the witness.

Mr. Davis:
Did anyone buy that 48 Chevrolet from Hollis Bryant on that occasion?
A. Yes, sir. Mr. Roberson.
Q. Now, Mr. Hamel, did you sell that 48 Chevrolet?
A. No, sir.
Q. Do you know whether anyone sold it?
A. I did not have anything to do with the sale of it. I think Mr. Thaggard bought the car.

Mr. Fuller:
We object, Your Honor, to: 'he said he didn't have anything to do with it.'

The Court:
I sustain that objection, and move to exclude it.

Mr. Davis:
Did you see anyone talk to Mr. Roberson regarding that car, or not?
A. No.

Mr. Fuller:
I object. He answered before I objected.

The Court:
You object to his answer?
A. Yes, sir.

The Court:
That will be excluded, Gentlemen, you will not consider the fact that he said he did not see or hear anyone buy a Chevrolet automobile.

Mr. Davis:
Did you sell that 1948 Chevrolet automobile to any one?

Mr. Fuller:
I object.

The Court:
Overruled.

A. No, sir.

Q. Did you borrow any money from Herman Roberson to buy that 48 Chevrolet automobile?

A. No, sir.

Q. Mr. Hamel, did you see Hollis Bryant again?

A. Yes, sir.

Q. How long after the 48 Chevrolet transaction, was it that you saw him again?

A. I don't remember the period of time that was covered, but it was shortly, just a matter of days.

Q. How did he come. Did he come to the lot?

Mr. Fuller:
I object.

The Court:
Sustained.

Mr. Davis:
Where did you see him?

A. On the lot.

Q. Did you see him approach the lot, or did you see him after he got to the lot?

A. After he was on the lot.

Q. Did you see anyone with him?

A. I don't remember whether he was by himself or not.

Q. Did you see him with anyone there on the lot?

Mr. Fuller:
We object, he said he didn't remember.

The Court:
Overruled.

Mr. Davis:

Did you see him with anyone on the lot?

A. I saw him talking to Mr. Roberson while he was on the lot.

Q. Did he and Mr. Roberson do anything on that occasion, that you saw and heard?

A. As far as I—I didn't see him doing anything.

Q. Did he have an automobile with him?

A. Yes, sir, he did.

Q. What kind of automobile did he have with him when he came there?

Mr. Fuller:

I object to this cross examination of this witness.

The Court:

Overruled.

Mr. Davis:

What kind of automobile did he have.

A. I think it was an Oldsmobile.

Mr. Fuller:

I object, to what the witness thinks Your Honor.

The Court:

That is not competent.

Mr. Davis:

Do you have a judgment, as to what kind of an automobile it was?

A. Yes, I do.

Q. What is your best judgment as to what kind of automobile it was?

A. An Oldsmobile.

Q. What year?
A. A 1950 model.
Q. What, if anything, was done with that automobile by Hollis Bryant on that occasion?

Mr. Fuller:
I object, unless from his own knowledge.

The Court:
Overruled.

A. The car was sold to Mr. Roberson.

Mr. Davis:
By whom?
A. Mr. Bryant.
Q. That is the tall light-haired, wavy-haired man you have seen here?
A. Yes, sir.
Q. Did you buy that car?
A. No.
Q. Did you have any conversation with Hollis Bryant about that car on that occasion?
A. No, sir.
Q. How did you get to meet Hollis Bryant?
A. Just casually around the lot.
Q. Did anyone introduce you?
A. No.
Q. Did you ever buy anything from him?
A. No.
Q. Did you borrow any money from Herman Roberson on that 1950 Oldsmobile?
A. No, sir.
Q. Mr. Hamel, have you ever borrowed any money at any time from Herman Roberson?

A. No sir.
Q. Mr. Hamel, did you sell that 1950 Oldsmobile?
A. No, sir.
Q. Do you know who did sell it?
A. We financed the car for him.
Q. Who is "we?"
A. My Company, McBrayer-Hamel Motors.
Q. You financed it?
A. Yes, sir.
Q. For whom?
A. For Mr. Roberson.
Q Who sold it?
A. I don't remember, sir. I handled the actual financing of the car and the writing up on it. The bill of sale is on our bill of sales for McBrayer-Hamel Motors.
Q. I see. And did you own any interest in the car?
A. No.
Q. Did McBrayer own any interest in it?
A. No, sir.
Q Was he your partner?
A. Yes, sir.
Q. Now, have you ever at any time borrowed any money from Herman Roberson?
A. No, sir.
Q. You may have the witness.

Cross Examination.

Mr. Fuller:
Q. Mr. Hamel, when Mr. Bryant and Miss Yarnell got ready to leave the McBrayer-Hamel Motor Company's lot, by what means did they leave?
A. I don't know, sir. I don't remember.

Q. Let me ask you, if you drove Mr. Bryant and Miss Yarrell to the depot? On one of those occasions?

A. I could have, sir, but I don't remember it.

Q. Well, what is your best judgment about it, Mr. Hamel? Did you or did you not drive Mr. Bryant and Miss Yarnell to the depot on one or both of the two occasions that you say Hollis Bryant came to your lot?

A. I don't believe I did. I could have, or my partner could have, I just don't remember.

Q. Let me ask you if you did or did not, or if your partner did or did not take Hollis Bryant and Miss Yarnell to the hotel on one occasion?

A. I don't remember that.

Q. What is your best judgment?

A. I don't think so.

Q. You are only able to think and not able to state your best judgment? You can't give us your best judgment on it?

A. Well, in the automobile business you transact a lot of business over the years, and it has been several years and I just can't remember as to whether I took her down or who took her down.

Q. Let me ask you if Mr. Roberson took either of them to the depot at any time?

A. I can't recall that.

Q. Now, Mr. Hamel, do you remember a third trip that Mr. Hollis Bryant made to your used car lot?

A. No, sir.

Q. I will ask you if he did make a third trip?

A. My partner, Mr. McBrayer said he did. He said

Mr. Davis:

We object to what Mr. McBrayer said.

The Court:
Sustained. Testify of your own knowledge.

A. I don't remember personally, I never did see him again after I moved down the street and left Mr. Roberson's lot.

Q. Now, what is the name of the mechanic that testified here this morning, that works for you, don't you run Motor Imports, now?

A. Yes, sir.

Q. What is the name of the mechanic that was here this morning?

A. Carl Goodson.

Q. Is he employed by you now?

A. Yes, sir.

Q. In the latter part of the summer of 1953, or some time during the summer, do you tell this jury that Hollis Bryant did, or did not, come back to your lot, arriving there at an extremely early hour in the morning?

A. No, sir.

Mr. Davis:
I object, unless he knows.

The Court:
I will overrule if he can answer the question.

Q. Would you answer that, please sir.

A. I don't know whether he came back or not.

Q. Now what are you telling the jury, that he did come back, or that you don't know if he came back?

A. I don't know whether he came back or not.

Q. Now, did you fix those papers for an automobile for Hollis Bryant during the summer of 1953?

A. No, sir. I told you I never saw Mr. Bryant again after I left Mr. Roberson's lot.

Q. The only information you got on Hollis Bryant's coming back is what you have been told by your partner, Mr. McBrayer, is that correct?

A. Yes, sir.

Q. Now, under what circumstances were you and your partner on the Herman Roberson lot?

A. We were originally in business on Madison Avenue and Mr. Roberson's lot was vacant, along about the first part of the year, 1953, and Mr. Earl Mosley, the owner of the Hollywood Drive-In, told us he had a lease on the lot, and we more or less got up an agreement with Mr. Mosley that we would split the profits on the lot, and we would pay him so much rent for the lot, to come out of the profit, of course. That was an unsatisfactory operation and Mr. McBrayer and I paid Mr. Mosley $1800.00 and a used jeep for a lease, which we found out later was not worth the paper it was written on. Mr. Mosley evidently could not sub-lease the property.

Q. Did you receive a notice to vacate the lot, from Mr. Roberson?

A. No, sir.

Q. You did not receive such a notice?

A. No, sir.

Q. Did you vacate the lot?

A. We later vacated it, yes, sir.

Q. Did you vacate it at the request of Mr. Roberson?

A. No, sir, it was at my own request.

Q. Where did you move to, when you moved?

A. We moved to 868 Bell Street, about a block and a half down the street from the Viaduct.

Q. Is that close to the General Truck Sale's place?

A. It sure is.

Q. On the right hand side, going out Bell Street?

A. That is right.

Q. And what sign did you and Mr. McBrayer have up there?

A. McBrayer-Hamel Motors.

Q. And what sign did you have on the Roberson lot when you had that?

A. McBrayer-Hamel Motors.

Q. Now, did Mr. Ina Thaggard, and Mr. Herman Roberson, the defendant in this case, come out to see you after Mr Thaggard found out that this Chevrolet automobile was stolen?

A. They sure did.

Q. Now, on that occasion, did Mr. Thaggard call on you to refund his money?

A. He never did, sir.

Q. Let me ask you if this took place on that occasion: Let me ask you if you didn't state to Mr. Ina Thaggard and Mr. Roberson, the defendant in this case, that you could not refund the money, that Mr. McBrayer, your partner, had run away with your money, the Company money, and the automobiles handling on the floor plan, You deny that?

A. I sure do.

Q. Now, do you know Mr. Thaggard?

A. Yes, I know Mr. Thaggard.

Q. And how well do you know him?

A. My knowledge of him is very limited.

Q. Let me ask you, when Mr. Thaggard was looking at that automobile, before it was sold to him, did you or did you not, state to Mr. Thaggard that you could not take $600.00 for that automobile?

A. I never had any correspondence with Mr. Thaggard whatsoever about the sale of that automobile, sir.

Q. I did not ask about correspondence, I am asking about conversation, now.

A. I meant conversation, sir.

Q. You had no conversation, you deny that now?

A. That is right, I sure do.

Q. You deny that you refused at first to accept $600.00 for that automobile, is that correct?

A. I had no dealings with him whatsoever. That was the first time I had ever seen him, was on the lot.

Q. When was that?

A. On the McBrayer-Hamel lot.

Q. On the occasion that the automobile was bought?

A. Yes, sir.

Q. That was the first time you had ever seen him?

A. That is right.

Q. Now, let me ask you this, if you did not testify on the previous trial of this case this: "If Mr. Thaggard says you were present there, he was mistaken?" Didn't you answer: "I would say it was not true, I had never seen Mr. Thaggard in my life." Wasn't that what you said? On the last trial?

A. I could have said that.

Q. Well, you did see Mr. Thaggard when that automobile was sold, didn't you?

A. I did not say that. I never did say I did not see Mr. Thaggard there.

Q. Didn't you testify in this Court room, on that stand, "I would say it is not true, I had never seen Mr. Thaggard in my life." Did you, or did you not, testify to that?

A. What I probably meant was—

Q. I am not asking your what you probably meant. I am asking you if you did it, or if you didn't do it?

A. I say I don't remember.

Mr. Fuller:

Your Honor, I would like to offer, from Page 91 of this record, this question and that answer. I would like to show that is the answer in the record.

The Court:

And he said he does not remember whether he testified to that or not. All right.

Mr. Fuller:

Mr. Hamel, you know Mr. Barnett, who testified in this case, don't you?

A. Yes, sir.

Q. He is Manager of the Finance Company that was handling the financing of the automobiles of McBrayer and Hamel, back in April and March of 1953, was he not?

A. That is right.

Q. Did you, or did you not, execute a bill of sale on the McBrayer Motor form as to a 1950 Oldsmobile sedan? I am handing you now, a document identified as Defendant's Exhibit No. 3.

A. You wish to know whether I made that out or not? It looks like my handwriting, I guess I did.

Q. What does that document relate to, that you have there in your hand?

A. Well, it looks like a 1950 Oldsmobile, sold to Norman Hatchett in Montgomery.

Q. In your handwriting?

A. It sure looks like it, yes, sir.

Q. Who does the bill purport to be from, and who—who does it purport to be from?

A. Well, it says McBrayer Motors on here, but of course we changed our bill of sale to McBrayer-Hamel Motors, after we moved.

Q. Well did you make that paper before you moved?

A. No, sir. It looks like my handwriting.

Q. It was made when you were still on the Herman Roberson lot?

A Yes, sir. I guess so.

Q. Now, you testified, did you not, on the last trial that you all did not use that form of bills of sale after you moved to the Herman Roberson lot, didn't you?

A. Sir, I don't think that I testified that. We had a bunch of old bills of sale and new bills of sale and either one of them.

Q. I mean did you testify on the other trial that you didn't use those bills of sale when you were on Herman Roberson's lot, if you did, that would not be true, would it?

Mr. Davis:

We object.

The Court:

I sustain the objection.

Mr. Fuller:

Did you, or did you not, continue to use that form of bill of sale after you moved on the Herman Roberson lot?

A. I don't remember whether I testified to that sir, or not.

Q. I want to hand you another document here, identified as Government's Exhibit No. 3, and ask you to state what it is?

A. This is a bill of sale, sold to Mr. Thaggard.

Q. What was sold to Mr. Thaggard?

A. A 1948 Chevrolet, 4-door, sedan, for $600.00.

Q. Who signed that bill of sale?

A. I signed it, but it is made out in three different handwritings.

Q. I did not ask about the handwriting. I asked if you signed your name on it, and you said you did, is that correct?

A. It looks like it is. I don't know whether I signed it before the bill of sale was made out or afterwards.

Q. I asked you if you signed a bill of sale, and that was all, I want to ask you if you know a gentleman by the name of Sergeant Roberts?

A. I sure do.

Q. James R. Roberts, over here from Dobbins Air Force Base, he is a military policeman?

A. Yes, sir.

Q. I ask you if you didn't sell that Oldsmobile automobile to him?

A. I did not sell the car to him.

Q. You did not?

A. No, sir.

Q. Your testimony is you did not sell this automobile to Sgt. Roberts, is that correct?

A. That is correct.

Q. Will you tell us if you dealt with Sgt. Roberts when he came there to buy a car?

A. I transacted the business but just like every car we sold for Mr. Roberson, we financed them, we handled the paper work because they would not take them otherwise, the Home Finance Company, unless we guaranteed the paper, McBrayer-Hamel Motors we re-enforced the paper.

Q. You know Mr. Barnett, the Manager of the Finance Company, don't you?

A. Yes, sir.

Q. Let me ask you, if it is not a fact, that your partner, Mr. McBrayer ran away from Montgomery with the floor planned automobiles from that very firm, right after this thing happened and took the money out of the business, is that true or not?

A. It is not.

Q. You deny that?

A. I sure do.

Q. Do you know Mr. Harold Burns? Mr. L. M. Burns?

A. I know Mr. Harold Burns.

Q. Let me ask you if you did not purchase some automobiles from Mr. L. M. Burns, give him a bad check, and your partner, Mr McBrayer ran away with those automobiles?

Mr. Davis:

I object.

Mr. Fuller:

Are you and Mr. McBrayer still in the automobile business together?

A. We are in a similar business. We are both in the imported car business. He is in Mobile and I am in Montgomery.

Q. He is in Mobile and you are in Montgomery?

A. Yes, sir.

Your witness.

Mr. Davis:

Mr. Hamel, do you recall the occasion about which Mr. Fuller asked you, when Mr. Thaggard and Mr. Herman Roberson came to see you?

A. Yes, sir.
Q. What did occur on that occasion?

Mr. Fuller:
I object to the form of the question.

The Court:
Sustained.

Mr. Davis:
Well, tell us what was said by Mr. Roberson, and you and Mr. Thaggard, and Mr. Roberson was present on that occasion?

Mr. Fuller:
I object.

The Court:
Overruled.

A. He asked me—
Q. Who?
A. Mr. Roberson and Mr. Thaggard both asked me if I had the records on these two automobiles in question I told them I had never had any dealings with them and I did not have the records.
Q. Did Mr. Thaggard ever ask you to pay for that?

Mr. Fuller:
I object to that question.

The Court:
Overruled.

A. No, sir.

Q. Did Mr. McBrayer, ever at any time, to your knowledge abscond with anything?

A. No, sir.

Q. Mr. Hamel, you say that is your signature?

A. Sure that is.

Q. For resale by Jack Hamel?

A. That is not my signature. That is not.

Q. But it is your right name?

A. Yes.

Q. How about that "for re-sale"? That is not written by your hand?

A. No, sir.

Q. But the "By Jack Hamel" is by your handwriting"?

A. That is right.

Q. Do you know the initials, on "Pay to McBrayer Motors," bill of sale, No. 16006, is that correct?

A. It looks that way.

Q. And Plaintiff's Exhibit No. 3, did you make that bill of sale out to Ina Thaggard?

A. No, sir.

Q. Do you know whether that was made out before or after you signed it?

Mr. Fuller:

I object to that.

The Court:

Let him state if he knows.

Mr. Davis:

Did you?

A. Yes, sir. That bill of sale was made out, my name on it. I mean my signature was on it before

the bill of sale was made out. When I make out a bill of sale I make it out complete, all the way down through it. Description of the car and who sold it and all, and then I sign it.

Q. Do you testify you never have signed a bill of sale without having first—

Mr. Fuller:
I object.

The Court:
I sustain that.

Mr. Davis:
All right I just want to get it, whether you signed this bill of sale before this was put on here or afterwards? Before this writing here: "Ina Thaggard Rutledge, Alabama, March 1953, a 1948 Chevrolet, 4-door, Motor Number FAA600987; $600.00, and "For re-sale?"

Mr. Fuller:
I object.

The Court:
Overruled.

Mr. Davis:
Was your signature put on that before or after that was written?

A. It was put on before.

Q. It was put on before, all right. Did you sell this car to Ina Thaggard?

A. No, sir.

Q. Will you look at this paper here. This is Defendant's Exhibit No. 2, introduced on March 30, 1957. Is that your signature appearing there on that paper?

A. It sure is.

Q. Did it bear the name of Norman Hatchett, at the time you wrote McBrayer-Hamel Motors on there?

A. I can't remember.

Q. Do you have a judgment about it?

Mr. Fuller:
I object.

The Court:
I sustain that.

Q. Do you say you do or you don't Mr. Hamel?

A. Yes, sir. I do remember it now, the financing of this deal. Did you ask me if my name was on here before this was signed?

Mr. Davis:
Who signed first, you or Norman Hatchett? Or if it was signed in your presence. Did you witness that signature of Norman Hatchett on there?

A. I signed it, so I must have witnessed it.

Q. Well, did you or not?

A. Yes, sir.

Q. Did you sell that car to Norman Hatchett?

Mr. Fuller:
I object.

The Court:
Overruled.

Mr. Davis:
Did McBrayer-Hamel Motors sell that car to Norman Hatchett?

A. No, sir.
Q. What did you do with that paper, what is the relationship between you and Norman Hatchett?

Mr. Fuller:
I object.

The Court:
I sustain it to that question.

Mr. Davis:
Did you finance the sale of that car?

A. Sure did, sir.
Q. Who sold that car?
A. Mr. Roberson.

Mr Fuller:
I object.

The Court:
Overruled.

Mr. Davis:
You may have the witness.

Cross Examination.

Mr. Fuller:

Q. Mr. Hamel, you said you never owed Mr. Roberson any money, is that correct?

A. That is right.

Q. I want you to look at this paper—

A. The business of McBrayer-Hamel might have owed him some money, temporarily, until we could get the transaction, the cash from the Finance Company to pay him for his deals.

Q. You still owe him some money, don't you?

A. It seems to me we owed him some money on that particular case.

Q. I ask you to state what this document is, marked Defendant's Exhibit No. 13.

Mr. Varner:

We object. Go ahead and ask the question.

Q. I just asked him to state what this exhibit is.

Mr. Varner:

And we object, unless its materiality is shown. The paper speaks for itself.

A. This is from McBrayer-Hamel Motors, 2265, it is for the purchase of a 1953 Plymouth.

Q. Is that check signed by Mr. Roberson?

A. Yes, sir.

Q. What is the date of the check?

A. April 1, 1953.

Q. And you did owe him some money, didn't you?

A. No, sir.

Q. Who is the check payable to?

A. McBrayer-Hamel Motor Company.

Q. This is Defendant's Exhibit No. 5, I will ask you to look at that?

A. It looks like a receipt from the Home Finance Company.

Q. I ask you, if you didn't get that payment from Mrs. Dorothy Roberson from Home Finance Company and pay that bill in cash yourself?

A. No, no, sir.

Q. You did not?

A. No, sir.

Q. All right. Now, I want to look at this document here. Document I am referring to is Defendant's Exhibit No. 14, I want to ask you if McBrayer-Hamel Motor did not, on April 5, 1953, give Mrs. Herman Roberson a bad check in the amount of $3,290.00?

A. I don't know whether it was a bad check or not. It could have been a check that hit the bank before our funds, we had, were credited to our account.

Q. It hit before the balance was paid to Mr. Roberson.

A. The check was never contested, was it.

Q. You say you have paid the money to Mr. Roberson?

A. Absolutely.

Q. Now, I want to get back to this document Mr. Davis was asking you about, the one identified as Govt. Ex. No. 2, the one he said he was witness to the signature of Norman Hatchett. Let me ask you if you didn't negotiate that contract with Home Finance Company, with Mr. Barnett as Manager of it.

A. My Company handled it, we got the money from the Home Finance Company and gave it to Mr. Roberson. As we did on all these deals—

Mr. Fuller:

That is not the question I asked, and ask that it be excluded.

Mr. Davis:

I think that it is competent, Your Honor.

Mr. Fuller:

I asked him if he negotiated that contract, and he said he got the money from the Home Finance Company and gave it to Mr. Roberson.

A. I certainly did, sir.

Mr. Fuller:

Did you take that contract to the Home Finance Company, Mr. Hamel?

A. Yes, sir, we did.

Q. Who is "we?"

A. My Company, McBrayer-Hamel Motor Company.

Q. Well, was that a corporation?

A. It was a partnership.

Q. And who gave it to Mr. Roberson?

A. McBrayer—and myself.

Q. And who took the contract to Home Finance Co.?

A. I could not tell you that to save my life. In fact we would wait until we would get several of them, and I don't know whether Mr. McBrayer took it or whether I took it. I signed it, that is my name on there.

Q. Do you, or do you not know, whether that contract was in the possession of Mr. Barnett, as Manager of the Home Finance Company, until it was brought to this Court and offered in evidence?

Mr. Davis:
Object. He couldn't possibly know that.

The Court:
He can tell you whether he knows or not.

A. I can't tell you about the policies of the Home Finance Company, and how they keep their records, etc., or where they keep them.

Q. Do you claim that this paper was witnesses by you, I am referring now to Exhibit No. 2, Government's Exhibit No. 2. That it was witnessed by you in blank, just as it is there?

A. Yes, I think so.

Q. Your best judgment is that it was filled out just like it is there, isn't it?

A. Yes, sir.

Mr. Fuller:
Your witness.

Mr. Davis:
No further questions.

The Court:
Next witness.

HAYDEN McBRAYER, being duly sworn, testified as follows:

Direct Examination.

Mr. Davis:
Q. Tell me your name?
A. Hayden McBrayer.

Q. Mr. McBrayer, where do you live?
A. In Mobile, Alabama.
Q. In March of 1953, where were you living?
A. Here in Montgomery.
Q. What was your business at that time?
A. Automobile business.
Q. Do you know Herman Roberson?
A. Yes, sir.
Q. Do you know Jack Hamel?
A. Yes, sir.
Q. At that time were you in partnership with Jack Hamel, or not?
A. Yes, sir.
Q. Do you know Hollis Bryant?
A. Yes, sir.
Q. When did you first know him?
A. In the first of 1953. I didn't know him by that name.
Q. Were you introduced to him?
A. No, sir.
Q. How did you happen to meet him?
A. I saw him on the lot that we operated on Bell Street.
Q. Who was he with?
A. Mr. Roberson.
Q. Which Mr. Roberson?
A. Mr. Herman Roberson.
Q. The defendant on trial here?
A. Yes, sir.
Q. Was there anyone else with him?
A. Right at that particular time there was not.
Q. Did you see him when he came to your lot?
A. No, sir.
Q. You saw him on the lot?
A. Yes, sir.

Q. Was any trade made at that time?
A. Well, I don't know, sir.
Q. Was any automobile bought at that time?
A. There was an automobile there, I don't know whether it was bought or not. It was there.
Q. With whom was it left?
A. It was left on the lot.
Q. With whom?
A. Mr. Roberson.
Q. Left by whom?
A. By Red.
Q. Is that the man that you now know as Hollis Bryant?
A. Yes, sir.
Q. What name did you know him by then?
A. Randle.
Q. Did you buy that automobile from him?
A. No, sir.
Q. Did you ever buy any automobile from him?
A. No, sir.
Q. Did your partner, Jack Hamel, buy that automobile from him?

Mr. Fuller:
We object to his leading.

The Court:
Don't lead the witness.

Mr. Davis:
Do you know whether your partner, Jack Hamel, bought that automobile from Hollis Bryant?

A. No, sir. He did not.

Mr. Fuller:
We object to that; that answer is not responsive.

The Court:
I sustain it.

Mr. Davis:
Do you know whether Jack Hamel bought that 1948 Chevrolet from Hollis Bryant on that occasion?

Mr. Fuller:
I object, he couldn't possibly know what his partner, Jack Hamel, did.

The Court:
Overruled.

Mr. Davis:
Answer yes, or no, did he or not?

A. He did not.
Q. Do you know who did buy that car?
A. No, sir, not for sure.
Q. Do you know who sold that car?
A. Yes, sir.
Q. Who was it?
A. Mr. Roberson.
Q. Did you see Red, or Hollis Bryant, again?
A. Yes, sir.
Q. How long afterwards?
A. Not too long afterwards, maybe a couple of weeks, or maybe a week.
Q. Where did you see him?
A. On the lot.
Q. Do you know how he came there on that occasion?

A. Yes, sir.
Q. How?
A. In an automobile.
Q. Did he have anyone with him?
A. Yes, sir.
Q. Who?
A. The young lady.
Q. Was that the first time you had seen the young lady or had you seen her before?
A. I had seen her before.
Q. When did you see her?
A. On the trip previous to that.
Q. I see. She came with him on both trips?
A. Yes, sir.
Q. Do you know who she is, have you seen her here at this term of Court?
A. I saw her last week, or when we were here.
Q. You mean Saturday a week ago when we were trying this case?
A. That is right.
Q. Do you remember her name?
A. No, sir. I don't.
Q. If I told you, would you remember it?
A. I think I would.
Q. Vernita Yarnell Philyaw?
A. I remember the Yarnell.
Q. Now, Mr. McBrayer, did you say you saw him come there, how did he come?
A. In an automobile.
Q. What sort?
A. An Oldsmobile.
Q. What year?
A. 50 model.
Q. Do you know whether he sold that car at that time?

A. Yes, I think he did.
Q. Do you know to whom he sold it?
A. I think he sold the car to Mr. Roberson.
Q. Don't say what you think.

Mr Fuller:
We object.

The Court:
I sustain that objection. Speak up, Mr. Witness, so the jury can hear you without straining.

Mr. Davis:
Was that car taken away from that lot by Hollis Bryant on that occasion, that 1950 Oldsmobile, or was it left on the lot?

Mr. Fuller:
I object.

The Court:
I sustain that. Don't lead the witness. You can ask him if he knows what happened to the automobile, but you can't ask him if it was taken away by Hollis Bryant on that occasion.

Mr. Davis:
Do you know what happened to that automobile on that occasion?

A. It was left on the lot.
Q. Did you buy it?
A. No, sir.
Q. Did Jack Hamel buy it, if you know?
A. No, sir.

Q. He did not?
A. Not that I know of, sir.
Q. Did you see Hollis Bryant later on?
A. Yes, sir.
Q. When?
A. After I moved.
Q. Did you, at that time, notarize a bill of sale for him?
A. I notarized a paper, yes, sir.
Q. Did you see him any more thereafter?
A. No, sir.
Q. Did he ask for anyone when he was there?
A. No, sir.
Q. Did you abscond from Montgomery with any money of McBrayer-Hamel Motors or any papers of McBrayer-Hamel Motors?
A. No, sir.
Q. Do you now owe Herman Roberson anything?
A. No, sir.
Q. Did you, or your partner, for your business, ever borrow any money from Herman Roberson?
A. No, sir.

Mr. Davis:
You may have the witness.

Cross Examination.

Mr. Fuller:
Q. Do you know Mr. L. M. Burns?
A. Yes, sir.
Q Did you abscond with any funds?
A. No, sir.
Q. Did you leave Montgomery with the floor planned automobiles that Mr. Barnett had floor plans on?

The Court:

I am not going to allow this witness to be intimidated, because he is not on trial, whether or not he had absconded had nothing to do with the guilt or innocence of Herman Roberson.

Mr. Fuller:

Your Honor, we think on our impeachment question, that we have witnesses—

The Court:

You want to bring in immaterial matters, not pertinent to this case.

Mr. Fuller:

We think, Your Honor, that if this man left here with automobiles that were floor-planned, that is an action that is a material matter. We think that we can show that.

The Court:

Just a minute, I told you I would not allow you to go into that, it is not pertinent in my judgment. I don't want to hear any more examination on it during the course of this trial for the Government or the defendant.

Mr. Fuller:

I am sorry, Your Honor.

Q. Mr. McBrayer, you testified when Mr. Davis asked you, about seeing this man, Hollis Bryant, on the third occasion, that he did come to your place. Now that was after you moved from the Herman Roberson lot, was it not?

A. Yes, sir.

Q. Where had you moved to, then?

A. Just across the viaduct on Bell Street.

Q. Is that out by the General Truck Sales?

A. Yes, sir. Right next door.

Q. Do you know this man, C. M. Goodson?

A. Yes, sir.

Q. Who was he working for back there in the summer of 1953?

A. He worked for McBrayer-Hamel.

Q. Do you know whether he is still working for Mr. Hamel, or not?

A. Yes.

Q. What time of the day was it, to your best judgment was it, that Hollis Bryant came back to the McBrayer-Hamel used car lot?

A. I believe it was in the afternoon. I am not positive.

Q. Lets get your best judgment on that, are you stating now that the man did come in the late afternoon in your best judgment, or are you just guessing?

A. Well not late afternoon, he came in the afternoon, I believe.

Q. Well, would you be positive about that?

A. No, sir. I couldn't be positive.

Q. Now, let me ask you if Hollis Bryant didn't bring another automobile there to the McBrayer-Hamel lot at Bell Street, where you moved to?

A. He was at our lot on Bell Street.

Q. And who was with him?

A. I don't know who was with him.

Q. Was it a man named Sanchez?

A. I am sure I don't know.

Q. You mentioned notarizing some papers, will you just tell the jury what you did do there?

A. I notarized some papers for Red.

Q. And what name did Red sign on that paper, Mr. McBrayer?

A. Sir, I don't remember. I think the last name was Randle. That was the name I knew him by.

Q. And what was the nature of the statement?

A. I am not sure. I believe it was for an Alabama Driver's License.

Q. For a driver's license for Mr. Randle?

A. Yes.

Q. He came there in the afternoon, that is your best judgment?

A. Yes.

Q. And he wanted an Alabama driver's license?

A. Yes, sir. He wanted a paper notarized.

Q. You knew Hollis Bryant pretty well, by that time, didn't you?

A. No, sir.

Q. Well, well enough to notarize a paper?

A. I knew him when I saw him.

Q. You hadn't seen anything suspicious about him, Hollis Bryant, up to that time, had you?

A. No, sir.

Q. Was there anything in his conduct up to the very moment that you stuck your name on there as a notary public on that Alabama Driver's License, to make you suspect that there was anything wrong?

Mr. Davis:

Object. It doesn't make any difference what he suspected.

The Court:

Overruled.

Mr. Fuller:

Was there?

A. No, sir.

Q. Now, let me ask you this: when Herman bought this car, that you say you think he did, and your best judgment is that Herman bought it, did he run around the building and slip a little money in Hollis' pocket?

A. Not that I know of.

Q. Did you hear him tell Miss Yarnell, Miss Yarnell I am going to pay for this automobile, but I am going to get behind the building where you can't see me, did you hear him tell her that?

A. No, sir.

Your witness.

The Court:

Is there anything further?

Mr. Davis:

Mr. McBrayer, if you had seen him pay $300.00 or $350.00 for a Chevrolet worth $550.00 to $600.00 wholesale, would you have had any suspiciion about it?

Mr. Fuller:

I object.

The Court:

Sustained.

Mr. Davis:

It is based on the evidence, Your Honor. All right. I have no further questions.

Re-Cross.

Mr. Fuller:

Q. Did you go with Sgt. Roberts to the Home Finance Company, to make a payment on his automobile, or did you meet Sgt. Roberts at Home Finance Company?

A. No, I didn't meet him there, I carried the payments down there.

Mr. Fuller:

All right. That is all.

Mr. Davis:

I would ask you, do you recall the occurrence?

A. Yes, sir. I do.

Q. Where did you get the money from?

Mr. Fuller:

I object.

The Court:

Overruled.

Mr. Davis:

Where did you get the money from?

A. Mr. Roberson gave it to me.

Q. Did you go down there of your own volition, or did he ask you to go, did Mr. Roberson ask you to go?

A. I went down there, he asked me to take it down there, I financed the car for Mr. Roberson.

Q. And you wanted this payment in to carry that financing out, was that car financed with or without recourse?

A. With recourse.

Q. That meant that Home Finance Company could come back on you, if it wasn't paid out?

Mr. Fuller:
I object.

The Court:
I sustain the objection.

Mr. Davis:
That is all.

The Court:
Next witness.

HAROLD McGLYNN, called as a witness, being duly sworn, testified as follows:

Direct Examination.

Mr. Davis:

Q. What is your name?

A. Harold McGlynn, Jr.

Q. Mr. McGlynn, with what organization are you associated with?

A. With the McGlynn Paper and Candy Company.

Q. In 1953, December 9, 1953, what business were you associated with?

A. I was with McPhail, Haigler and McGlynn, independent insurance adjustors.

Q. I ask you this, on or about December 9, 1953, did Herman Roberson with Dave Rainey, come to your office to pay for a 1951 Cadillac automobile, sold to Major Joye, and did they pay for it and did you then for the insurance company that you represented, give them a bill of sale made to Bill Rhodes?

Mr. Fuller:
I object.

The Court:
Overruled.

A. Yes, sir, I did.
Q. Did that occur?
A. Yes, sir.
Q. Now, look at this paper marked Defendant's Exhibit No. 1, and tell me if that is the paper you on that occasion?
A. Yes, sir. It is.

Mr. Davis:
You may have the witness.

Cross Examination.

Mr. Fuller:

Q. Would you read that paper, please, to the jury, Mr. McGlynn?
A. Yes, sir. It is a bill of sale on an automobile: "Know all men by these presents and in consideration of $2100.00 to us in hand paid by Bill Rhodes, receipt of which is hereby acknowledge, we do bargain, sell, and convey to the said Bill Rhodes, one 1951 Cadillac four-door, Motor Number 516095134. I do hereby

covenant and agree to warrant and defend the sale of said automobile unto the said Bill Rhodes, against any lawful claims and demands of all and every person, or persons, whatsoever. This car is sold as accepted and is not guaranteed. Witness our hand, this 9th day of December, 1953. Signed: Truck Insurance Exchange, by McPhail, Haigler and McGlynn. By Harold McGlynn, Jr."

Mr. Fuller:

Thank you, Mr. McGlynn, On the last trial of this case, the Court asked you this question: He said: "I want to ask this witness a question: Who instructed you to make this bill of sale on that Cadillac to Bill Rhodes, do you know?" And you answered, did you not? "The Insurance Company."

A. The Truck Insurance Exchange, that we represented at that time.

Q. The next question the Judge asked you was: "Told you to make the bill of sale on the Cadillac, too?" And your answer was: "Yes, sir." Is that correct?

A. Yes, sir.

Q. That is all.

Mr. Davis:

Who paid you the money?

Mr. Fuller:

I object.

The Court:

Overruled.

A. Mr. Herman Roberson came in and gave me a check, in company with Mr. David B. Rainey.

The Court:
Anything further?

Mr. Fuller:
Yes, sir. Will you tell us, Mr. McGlynn whether or not that was a Modern Finance Company check that you received on that occasion? You knew very well that was made to you?

A. It is hard for me to say.

Q. Will you answer me please. What I am asking you is, will you state whether or not that was a Modern Credit Company check made payable to Bill Rhodes, and indorsed over to the Insurance Company by Bill Rhodes.

A. I can't recall exactly the, I am sure it was a Modern Credit Company check, but I don't recall exactly who it was payable to.

Mr. Fuller:
That is all.

The Court:
Who is the next witness?

MR. SPENCER ROBB, called as a witness, being duly sworn, testified as follows:

Direct Examination.

Mr. Davis:
Q. What is your name?

A. Spencer H. Robb.

Q. What is your occupation?

A. I am a Special Agent of the F. B. I.

Q. How long have you been such?

A. Sixteen years.

Q. How long have you been stationed in Montgomery?

A. Eleven years.

Q. Do you know Herman Roberson?

A. I do.

Q. Did you, on or about, August 19, 1954, together with Mr. Myron Turner, interview Herman Roberson? When nobody was present but you three?

A. I did.

Q. Where was that?

A. In Montgomery.

Q. At that time, did he say this to you, or this in substance: "I lent Bill Rhodes $2,000.00 in June of 1953 to buy a 1951 Cadillac?

A. Yes, sir.

Q. You may have the witness.

Cross Examination.

Mr. Fuller:

Q. Mr. Robb, did you check with the Alabama National Bank to determine whether or not there was a check issued in favor of Bill Rhodes?

A. No, sir.

Q. I will show you here, the document marked Defendant's Exhibit No. 6, and ask you if you have ever seen that exhibit at a previous time?

A. Only when we were here before in this Court.

Q. And your testimony is you did not check with the Alabama National Bank to determine whether or not there was such a check, is that true?

A. That is true.

Q. Now, this document here, that is identified as the Government's Exhibit No. 1, I will ask you to state whether or not you have seen that before?

A. Yes, sir.

Q. Where did you first see it, Mr. Robb?

A. In Bill Rhodes possession.

Q. Where was Bill Rhodes at the time you saw that document in his possession?

A. He was at his store on the Narrow Lane Road.

Q. At that time, did you take the document you have just referred to there, in your possession, or what?

A. Mr. Turner, who accompanied me, took it in his possession.

Q. Mr. Turner is also an F. B. I. Agent?

A. That is right.

Q. And he took that document, the bill of sale, from J. L. Newman to Bill Rhodes, that is the document we are referring to here, and Mr. Turner took that into his possession, at that time?

A. Yes, sir.

Q. Did it remain in Mr. Turner's possession until it appeared in this Court room on the last trial of this case?

A. To the best of my knowledge it did, yes. It was either in his possession or in the files of the case.

Mr. Fuller:

That is all.

Mr. Davis:

Mr. Robb, I will ask you this, do you know where Bill Rhodes lives?

A. Yes, sir. I know where he did live at that time.

Q. Where?

A. It is on the Narrow Lane Road, I believe it is the corner of Narrow Lane Road and Fleming Road.

Q. Is that just this side or beyond the Narrow Lane Inn?

A. It is just beyond Narrow Lane Inn.

Q. It is south of there. Do you know where Herman Roberson lived, at that time, in relation—

Mr. Fuller:

I object to that.

The Court:

I sustain the objection.

Mr. Fuller:

Mr. Robb, you said Narrow Lane and Fleming Road, you meant to say Narrow Lane and Seibles Road, did you not?

A. Yes, sir. That is right.

Q. I ask you if the former Bill Rhodes' Store there, Well, first, about how far does that store sit back from the road, Mr. Robb, just roughly?

A. The front of it may be ten yards.

Q. I will ask you, if an automobile parked there by that store would be open to observation by any person or persons travelling along either of those two roads?

A. If parked in front, yes.

Q. That is all.

MYRON TURNER, called as a witness, being duly sworn, testified as follows:

Direct Examination.

Mr. Davis:

Q. You are Myron Turner?

A. Yes, sir.

Q. You are Special Agent of the F. B. I. stationed in Montgomery, and have been stationed here for several years, is that correct?

A. That is right.

Q. Did you in 1954, investigate this case with Mr. Robb?

A. Yes, sir.

Q. Did you and Mr.Robb, with no one else present, talk to Herman Roberson in Montgomery, Alabama, on or about August 19, 1954?

A. Yes, sir.

Q. At that time did he tell you this, or this in substance: I lent Bill Rhodes $2,000.00 in June of 1953, to buy a Cadillac?

A. Yes, sir.

Mr. Fuller:

We object. I believe the witness would testify if he would let him.

The Court:

You may question him on cross examination. Overruled.

Mr. Davis:

That is all.

The Court:
Cross examination.

Mr. Fuller:
Q. Mr. Turner, you have been in the Court room throughout this trial, have you not?
A. Yes, sir.
Q. I will ask you if you checked at the Alabama National Bank to determine whether or not there was such a check as the check that I have just showed Mr. Robb?

Mr. Davis:
We object, that is immaterial.

The Court:
Overruled.

Mr. Fuller:
Such a check as the check I showed Mr. Robb, which has been marked as Defendant's Exhibit No. 6?

A. I did not.
Q. When was the first time you saw this check, Mr. Turner?

Mr. Davis:
We object.

The Court:
Sustained.

Mr. Fuller:
I hand you now a document marked Government's Exhibit No. 1. I ask you to state what that is?

A. A bill of sale.

Q. Who is it from and who is it to, Mr. Turner?

A. The bill of sale is from J. L. Newman, it was given to Bill Rhodes.

Q. Now, what date is the bill of sale, Mr. Turner?

A. June 8 ,1953.

Q. Now what does it call for?

A. It pertains to the sale of a 1951-60 Special-Cadillac, automobile. Motor Number 51-6095134.

Q. Did you check this car to see whether or not that is the correct motor number, Mr. Turner?

Mr. Davis:

We object, that is immaterial.

Mr. Fuller:

How did you come into possession of the paper you hold in your hand there, the Government's Exhibit No. 1?

A. I obtained it from Mr. Rhodes, Mr. Bill Rhodes.

Q. And where was Mr Bill Rhodes at the time you obtained possession of it?

A. He was at his residence on Narrow Lane Road, near Narrow Lane Inn, just beyond it.

Q. And he has a combination store and filling station there, does he?

A. Yes, sir.

Q. It is on the corner of Narrow Lane Road and Seibles Road, just across from Narrow Lane Inn.

A. Yes, sir.

Q. Would, or would not, any automobile parked up there by that store be open to observation by persons who were passing by the road?

A. It would be.

Q. That is all.

Mr. Davis:
Government rests.

The Court:
All right, anything in sur-rebuttal?

Mr. Fuller:
We do have, but we would like a few minutes recess.

The Court:
Gentlemen, we are going to take a few minutes recess. Do not discuss the case. Do not form any opinion as to the defendant's guilt or innocence. Court will be in recess for ten minutes.

Thereupon Court was adjourned for ten minutes.

EVERETT MOORE, being called as a witness, being duly sworn, testified as follows:

Direct Examination.

Mr. Fuller:
Q. Will you state your name, please, sir.
A. Everett Moore.
Q. What business are you in?
A. I am in the used car business.
Q. How long have you been in the used car business in Montgomery, Alabama?
A. Off and on for about eight months.
Q. I will ask you if you knew either Mr. Heyden McBrayer, or Mr. Jack Hamel?
A. I know Mr. Hamel. I don't know Mr. McBrayer.

Q. How long have you known Mr. Jack Hamel?
A. About five years.
Q. How close association did you have with Mr. Jack Hamel, during the five years you say you have known him?
A. I did business with him.
Q. I will ask you if you think you know what Mr. Jack Hamel's general reputation is in Montgomery, Alabama, where he resides?

Mr. Davis:
We object.

The Court:
Sustain the objection.

Mr. Fuller:
I will ask you if you think you know what Mr. Jack Hamel's reputation is for truth and veracity is, in Montgomery, Alabama?

Mr. Davis:
We object. He asked if he thinks he knows.

The Court:
He can ask if he knows.

Mr. Fuller:
If you know?
A. With my business, I wouldn't—

The Court:
Now, that is not what he asked you, he asked you if you knew what Jack Hamel's reputation is here in Montgomery, Alabama, for truth and veracity? State whether or not you know, yes, or no.

Mr. Fuller:

Do you know, Mr. Moore?

A. Yes, sir.

Q. Is it good or bad?

A. It is bad as far as my dealings with him.

Mr. Varner:

We object.

The Court:

I sustain it, that was not responsive. I cautioned you, Mr. Witness, to answer whether or not you knew his reputation, that is what people say about him for truth and veracity here in Montgomery, yes or no. Do you know?

A. No, sir.

Q. What is your answer, you don't know?

A. I don't know what people in Montgomery say about him.

Mr. Fuller:

What I asked you was, if you knew his general reputation here in Montgomery for truth and veracity. I am asking you if you know or if you don't know?

Mr. Varner:

We object on the basis he said he didn't know what the people in Montgomery think about him.

The Court:

Well, reputation is what other people say about him. Mr. Moore, with that caution I overrule the objection.

Mr. Fuller:
Would you answer the question?
A. I have heard both ways. It wasn't and it was good.
Q. Let's try it one more time. The first question asked is, do you know the reputation of Mr. Jack Hamel in this community for truth and veracity? Do you know answer yes or no, please.
A. No, sir. I don't know.

Mr. Fuller:
You may be excused.

The Court:
All right.

Mr. Fuller:
We call Mr. Dave Rainey.

DAVID B. RAINEY, being called as a witness, being duly sworn, testified as follows:

Direct Examination.

Mr. Fuller:
Q. Is this Mr. Dave Rainey?
A. That is right.
Q. Mr. Rainey, what is your present job?
A. Right now I am self-employed in the publishing business.
Q. I will ask you if you have been the Manager of an automobile financing concern here in Montgomery, known as the Home Finance Company, or the Modern Finance Company?

A. It is the Modern Credit Company.

Q. All right, how long were you manager of Modern Credit Company?

A. A little over nine years.

Q. I will ask you if during the early part of 1953, the defendant in this case, Mr. Herman Roberson, had credit with your company for the financing of automobiles?

A. He did.

Q. I will ask you if there was any particular limit on the credit of Mr. Herman Roberson for the financing of automobiles with the Modern Credit Company?

A. His retail line was almost unlimited.

Q. Almost unlimited?

A. Yes.

Q. Now, you say retail line, you mean there are two lines, wholesale and retail?

A. That is correct.

Q. Will you explain what his wholesale line was?

A. In 1953 Mr. Roberson did not have a wholesale line of credit with our credit company.

Q. Was Mr. Herman Roberson operating at that time to your knowledge?

A. Not to my knowledge.

Q. I will ask you if you know Mr. Jack Hamel, and Mr. Heyden McBrayer, either or both?

A. I do.

Q. How long have you known Mr. Jack Hamel, and Mr. Heyden McBrayer?

A. I would say approximately six years.

Q. I will ask you if you know the general reputation for truth and veracity in this community of Mr. Jack Hamel and Mr. Heyden McBrayer? Let's take Mr. Hamel first. I will ask you if you know his general reputation for truth and veracity, of Mr. Hamel in this community.

A. I do.

Q. Is it good or bad?

A. It is bad.

Q. I will ask you if you know the general reputation of Mr. Heyden McBrayer in this community for truth and veracity?

A. I do.

Q. Is it good or bad?

A. It is bad.

Q. I will ask you if based on your knowledge of the general reputation of these two gentlemen, you—Well, let's separate them. I will ask you if based on your knowledge of the reputation of Mr. Jack Hamel, if you would believe him in a Court of law, touching a matter in which he is concerned?

A. I would not.

Q. All right. I ask you if you would believe Mr. Heyden McBrayer in a Court of law, based on your knowledge of his reputation in this community, in a Court of law in a matter in which he is concerned?

A. I would not.

Mr. Davis:

What have you ever heard anybody say about Jack Hamel?

A. Well, I personally know—

Q. I asked you what you had heard anybody say about Jack Hamel?

A. I have heard it said in Montgomery—

Q. Who said anything about him?

A. I have heard it said in Montgomery that Jack Hamel sold cars out of trust that were financed to Home Finance Company.

Q. Whom did you hear say that?

A. I would say every used car dealer in Montgomery. It is general knowledge.

Q. Well, name one?

A. Bill Hargrove.

Q. Bill Hargrove, that is the one person you have heard say anything about him?

A. You said name one.

Q. Yes, sir. Now, name another one?

A. Ralph Smith.

Q. You mean—he runs this little place across the street here?

A. Yes, sir.

Q. What does Bill Hargrove run?

A. Hargrove Motor Company.

Q. And Ralph Smith and Herman Roberson are just as inseparable as the two fingers on my hand, aren't they?

Mr. Fuller:
I object.

The Court:
Sustained.

Mr. Davis:
Tell me this, when did you ever hear anybody say they wouldn't believe Jack Hamel on oath?

A. I just said it.

Q. I said when did you hear anybody else say it?

A. I haven't heard anybody else say it.

Q. When have you ever heard anybody say that Jack Hamel didn't tell the truth?

A. I don't recall.

Q. What you are testifying about is a matter you know about yourself, is that right?

A. And what I have heard.

Q. Well, do you know, you don't recall anybody saying anything, do you?

A. No, I don't.

Q. And you are not testifying about his reputation you are testifying about something you think you know about, is that correct?

A. Yes, sir. About what I have heard and what I know.

Q. And you are supposed to be testifying about what you had heard, you know that, that is what reputation is, don't you?

A. No, I didn't know that.

Q. Reputation is what people say about a man, the people in the community in which he lives, and you are basing it on your own beliefs, aren't you?

A. On my knowledge and what I have heard.

Q. You are not basing it on what you had heard, are you?

A. Not entirely.

Mr. Davis:

We move that his testimony be excluded.

Q. Now, did Herman Roberson have a line of credit with you in February and March of 1953?

A. Retail, yes; wholesale, no.

Q. Did you testify here in the trial of this case about a year ago?

A. I did.

Q. Did you at that time, when this question was asked you by me, "Mr. Rainey, did Herman Roberson have a line of credit with you in February and March of 1953," Did you answer: "I don't believe that he did."

A. I did.

Q. And was this question asked you: "Had he previously had an open line of credit with you?" And did you answer, "Yes, sir."

A. I did.

Q. And this particular question was asked you: "Had it been discontinued?" And did you say: "Yes, sir."

A. Yes, sir.

Q. What have you heard anybody say about Hayden McBrayer, as to telling the truth?

A. I don't believe I have heard anything about Heyden McBrayer, other than people I know, automobile dealers—

Q. Have you heard automobile dealers say that Hayden McBrayer didn't tell the truth?

A. Yes, sir.

Q. Who did you hear say that?

A. I could name half of them but I will name the two I named before: Bill Hargrove and Ralph Smith.

Q. And they said that about Jack Hamel and about Heyden McBrayer?

A. Yes, sir.

Q. You are no longer with that Finance Company, are you?

A. No, sir.

Q. You lost your job, didn't you?

Mr. Fuller:

Now, I object.

The Court:

I sustain the objection to that. Gentlemen, you will not consider that question.

Mr. Davis:

You may have the witness.

Cross Examination.

Mr. Fuller:

Q. What is your present employment, Mr. Rainey?

A. I am partner in the Alabama Safety Association.

Q. Is that operated over here in the Moore building?

A. Yes, sir, it is.

That is all. Thank you, sir.

L. M. BURNS, next called as a witness, being duly sworn, testified as follows:

Direct Examination.

Mr. Fuller:

Q. Is this Mr. L. M. Burns?

A. Yes, sir.

Q. Mr. Burns, where do you live?

A. 2614 Plum Street.

Q. Here in Montgomery?

A. Yes, sir.

Q. Who are you employed by, Mr. Burns?

A. The G. M. & O. Railroad.

Q. How long have you been employed by the G. M. & O.?

A. Fifteen years.

Q. I will ask you if you know Mr. Jack Hamel and Mr. Hayden McBrayer?

A. Yes, sir.

Q. How long have you known Mr. Jack Hamel and Mr. Hayden McBrayer?

A. About ten years, I would say.

Q. I will ask you if you had dealings with Mr. Jack Hamel and Mr. Hayden McBrayer?

A. Through my brother, yes, sir.

Q. And you did personally conduct those dealings?

A. To a certain extent, yes, sir.

Q. Could you tell us what period of time you had for observation of Mr. McBrayer and Mr. Hamel?

A. Well, I couldn't tell you the dates, they called me and wanted me to go over there—

The Court:

He just asked you for the period of time.

A. I don't know what he wants.

The Court:

Approximately what period of time did you have knowledge of these two people, Mr. Hamel and Mr. McBrayer?

A. I would say approximately five years.

Q. And what did the dealings consist of that you had personally, with them?

Mr. Varner:

We object.

The Court:

Sustained.

Mr. Fuller:
I will ask you to state whether or not you know the reputation of Hayden McBrayer and Jack Hamel in this community for truth and veracity?

Mr. Varner:
We object.

The Court:
Sustained, take it one at the time.

Mr. Fuller:
I will ask you if you know the general reputation of Jack Hamel in this community, for truth and veracity?

Mr. Davis:
We object, he had already shown he has no basis for any knowledge.

The Court:
Overruled.

A. Well, to a certain extent.
Q. What do you mean by a certain extent?

Mr. Davis:
We object.

The Court:
Sustained.

Mr. Fuller:
Well, do you know, or don't you know?

Mr. Davis:
We object.

The Court:
I will let him answer that if he knows, Mr. Burns, reputation is what people say about a man, the lawyer has asked you whether or not you know the reputation of Mr. Jack Hamel, in and around Montgomery, Alabama, for truth and veracity.

A. It hasn't been too good.

Q. That is not the question I asked you. I asked you if you knew, yes, or no. Do you know or don't you?

A. I know of it.

Q. All right, is it good or bad?

A. Bad.

Mr. Fuller:
Now, take Mr. Hayden McBrayer and answer the same question, please?

A. It is bad.

Your witness.

Mr. Varner:
How long did you say you had known Mr. Hamel?

A. Approximately ten years, I will say.

Q. Didn't you testify a few minutes ago about five years?

A. Well, that was the period of time that business was being transacted.

Q. Have you talked to people about Jack Hamel, for as long as ten years, off and on?

A. I couldn't say, I knew of him and heard of him, yes, sir.

Q. And about how long have you known McBrayer?

A. About ten years.

Q. Have you seen him around town for that length of time?

A. I have not seen him for the last three or four years.

Q. As a matter of fact, he has been gone for at least four years?

A. As far as I know, yes, sir.

Q. You testified a while ago that you had an opportunity over the past five years to observe Mr. McBrayer, you were mistaken then, weren't you?

A. No, sir. I said it was over a period of five years.

Q. Over what period of five years?

A. I would say approximately, I haven't known anything about him to amount to anything, for the last two or three years, and the five years previous to that.

Q. You don't know what people think of him in the community in which he lives now, do you?

A. No, sir.

Mr. Varner:

We move to exclude his testimony.

The Court:

That will be excluded, Gentlemen.

Mr. Varner:

That is all.

Mr. Fuller:

Mr. Varner asked you about the extent of your dealings with either of these gentlemen, and as I understood the question, I may have misunderstood him. Would you answer what dealings you had with Mr. Hamel and Mr. McBrayer, and when?

Mr. Davis:
I object.

The Court:
Sustained.

Mr. Fuller:
No further question.

H. A. BARNETT, next called as a witness, being duly sworn, testified as follows:

Direct Examination.

Mr. Fuller:
Q. Mr. Barnett, you testified in this case the day it adjourned, did you not?
A. Yes, sir.
Q. I will ask you if you were Manager of the Home Finance Company, back in 1953, in March, April and May, along in there?
A. Yes, sir.
Q. I ask you if you financed some paper with Jack Hamel and Hayden McBrayer, at that time?
A. Yes, sir.
Q. I will ask you if Hayden McBrayer left Montgomery with the floor planned automobiles, at that time without your knowledge and consent?

Mr. Davis:
We object. Your Honor had already ruled on that.

The Court:
I sustain the objection, anything further?

Mr. Fuller:
We rest our case, Your Honor.

The Court:
How much time do you want, Gentlemen?

Mr. Fuller:
Thirty minutes to the side, would be all right.

Mr. Davis:
Thirty minutes to the side will be all right.

Mr. Varner:
Opened the argument to the jury.

—They could not sell these cars to dealers, they would be into it. So, what did they do? They came here to Montgomery, looking for Herman Roberson—

Mr. Fuller:
I object, Your Honor, there is nothing in the evidence—

The Court:
Overrule your objection. The jury remembers what the testimony was.

Mr. Reynolds next argued the case to the jury.

—And Norman Hatchett was in the Government's witness room and he was in this room, all day Saturday, if Your Honor will permit the records to show that. He was personally present in this Court room on the day of the hearing.

The Court:

All right. I am going to permit counsel to explain an argument which opposing Counsel has made, which was improper to start with, and that is as far as I am going on that.

Mr. Davis:

Norman Hatchett was inside this Court room. We wanted to use him in rebuttal; they used him the time before and we wanted to use him in rebuttal.

Mr. Fuller:

We object.

The Court:

I sustain that objection. Gentlemen, you won't consider that. Now, Mr. District Attorney, be more careful about this. This is an exception to the rule, I permitted you, in the discretion I have in this case, to explain why you didn't use him this time. Make no reference to the former trial, you will not consider that, Gentlemen of the Jury.

Mr. Davis:

We wished to use him in rebuttal, and we had a report that he was in the hospital this morning, and we couldn't use him, that was the reason we couldn't use him. He was just as available to them as he was to us, then Mr. Fuller accused me of bringing Hatchett in, I want you to know he hasn't said one word about this case until I objected to him being on the witness stand.

Mr. Fuller:

Argued the case to the jury.

Mr. Davis:
Summed up to the jury.

—He didn't have but $3556.78 in there.

Mr. Fuller:
I object. The District Attorney stated while Mr. Flowers was on the stand, that he wanted to send to the Bank to see if he could find anything about any entries, Mr. Flowers did not come back in, I just assumed that the District Attorney was satisfied that the account was correct, and I object to any inference, there is no evidence that would justify any inference that there was anything wrong with any entry on that Alabama National Bank statement.

The Court:
I did give you an opportunity to make your argument. Your time is up, I overrule your objection.

The Court's Charge to the Jury.

The Court:
Gentlemen, it is time for the Court to discharge its responsbility and advise you as to what the law is that you are to take and apply to the facts in this case.

Gentlemen, you have certain functions to perform in this case, the Court has certain functions, and Counsel has certain functions that they have to perform. One of the functions that it is necessary for the Court to perform, is to rule on what evidence is admissible, and what evidence comes into the case for your consideration, and then to advise you, Gentlemen, what the law is that you take and apply to the facts as you find them.

Another responsibility that the Court has, and sometimes it is a difficult one, is to, in the event a verdict of guilty in any given case, it is the responsibility of the Court to impose whatever sentence is considered necessary in the case, if, in his opinion a sentence is necessary in the case.

Gentlemen, your function is the finders of what the facts are, you are the sole judges of the evidence in the case. The Court doesn't presume, I don't presume at this time, to tell you what the facts are in this case. I am not going to review the testimony for you, because you heard it as well as I; there is no reason to believe that you can't remember it as well and as accurately as I can. You, Gentlemen, are, as I say the sole judges of the evidence, you are the finders of facts; determine what the facts are, from the documentary evidence and from the oral testimony that has been elicited from the witness stand. In doing that, Gentlemen, the law presumes that you will use your common sense; it presumes that you Gentlemen are men that are reasonable, and men that have experience, past experience in life and have those experiences that you can draw from to determine, and to assist you in determining what the facts are in the case.

In determining what the facts are, and in making an effort to determine what the facts are in this particular case, Gentlemen, the law requires that you consider all of the evidence in the case. It may be, and will probably be in this case, that you will arrive at a point in your deliberations to where you cannot reconcile all the facts and make those facts speak the truth. You may be confronted with, what we refer to as irreconcilable conflict in the testimony in the case, and you might have facts that you cannot

reconcile with the truth. If that is the case, and if you do find that to be the case here, Gentlemen, then it is your responsibility to determine what evidence you will believe, and what evidence you will disbelieve.

In that connection, Gentlemen, in using your common sense, and in drawing on these past experiences that you have had, you might remember whether or not a witness appeared to be telling you the truth, whether or not the witness appeared to have something to hide, or something to conceal from you, whether or not the witness appeared to be frank or open in his testimony, or in her testimony. Whether or not the witness had something to gain, or something to lose, as a result of the testimony that that witness gave from the witness stand. All those facts are to be taken into consideration, Gentlemen, in determining what you will believe and what you will cast aside, in the event that you find irreconcilable conflict in the testimony. In that connection, I charge you, that, if you believe any witness during this trial has wilfully sworn falsely to any material facts, then you may—it is not necessary, but you may in your discretion, disregard all of the testimony that that witness gave from this witness stand.

That follows the common axiom, Gentlemen, of "false in one thing, false in everything." That is not necessarily true, but it may be true—you Gentlemen may find it to be true. In that connection, Gentlemen, I charge you that the defendant in this case has a right to testify. The defendant in this case has testified, just because he is defendant is no reason why you can or should capriciously reject his testimony. It doesn't mean that just because he is defendant in the case, he has not told you the truth. You do have

a right to consider, however, Gentlemen, that he is the defendant in the case, that he stands to gain or stands to lose, as a result of the verdict rendered in this particular case. That is just one of the additional things that you have a right to take into consideration.

Now, Gentlemen, the case comes to you by an indictment; but charge you that an indictment is not evidence in a case, this indictment is not evidence in this case; you won't consider it as evidence. It is merely the means by which this defendant is brought before a jury of twelve men, his peers, to stand trial for a charge that the Government has brought. Now, this indictment originally charged against Herman Roberson and Bill Rhodes—the guilt or innocence of Bill Rhodes is not involved in this lawsuit, Gentlemen, you won't consider that. That is not your responsibility to determine and it is not one of the issues in the case. Originally there were five counts in this indictment. A count is nothing except a separate and distinct offense charged. There are four counts now, Count 2, has been dismissed. It is no longer a part of this case. You have, therefore, Count 1, Count 3, Count 4, and Count 5. Four separate and distinct charges the Government has made, even though the last two, Count 4 and Count 5 you will find, concern the same automobile, they do not charge separate and distinct violations of the Federal law. The guilt, or innocence of this defendant, stands separately as to each Count in the case. Just because he may be guilty or innocent of one Count, doesn't necessarily mean that he will be guilty or innocent of any other Count in the case, Gentlemen.

In other words, let me emphasize this, he stands innocent or guilty, separately and severally as to each of the four Counts, charged in this indictment.

Even though I am going to permit you to have this indictment, I want to caution you that it is not evidence. I will permit it to go with you in to the jury room, solely for whatever assistance it may be in guiding you in your deliberations in the case.

Now, Gentlemen, Count 1, in the case, charges that on or about March 4, 1953, in this District, this defendant, Herman Roberson, received a stolen motor vehicle, that is a 1948 Chevrolet automobile, which was moving as interstate commerce, and that he then knew said motor vehicle to have been stolen.

As I stated before, Count 2, is out, and is no longer a part of this case.

Count 3, refers to the middle of March, 1953, in this District, and charges Herman Roberson received a stolen motor vehicle, that is a 1950 Oldsmobile, which was moving in interstate commerce, that he then knew said motor vehicle to have been stolen.

Count 4, refers to June 9, 1953, in this District, and charges Herman Roberson and Bill Rhodes—but I charge you again, that Bill Rhodes in Count 4, or Count 5, is no longer in the case; that is not for your determination. So, the Count now reads, that Herman Roberson received a stolen motor vehicle, that is a 1951 Cadillac automobile, which motor vehicle was moving in interstate commerce, and he then knew said motor vehicle to have been stolen.

Count 5, charges on or about June 11, 1953, Herman Roberson sold, you will notice that Count 1, Count 3 and Count 4, relate to receiving, and Count 5 relates to selling, and I charge you again, that it charges a separate and distinct offense, under the Federal statute.

The sold stolen motor vehicle, that is the 1951 Cadillac automobile, which said motor vehicle was mov-

ing at interestate commerce and that he then knew said motor vehicle to have been stolen.

Now, Gentlemen, each of these counts, charge a separate offense. Each offense has certain elements in it which are necessary in order to constitute the complete offense. It is necessary in each instance that the motor vehicle be stolen; it is necessary in each instance that the motor vehicle have been transported in interstate commerce; it is necessary in **Count 1, 3, and 4, that the motor vehicle was sold** by this particular defendant. And, it is also, in each of the Counts, necessary that the defendant, at the time he received it, or in Count 5, at the time he sold it, the stolen automobile that had been transported in interstate commerce, that he have knowledge that the automobile was stolen.

In that connection, Gentlemen, let me charge you this; the statute reads this way: "Whoever receives, conceals, stores, barters, sells, or disposes of any motor vehicle moving as, or which is a part of, which constitutes interstate or foreign commerce, knowing the same to have been stolen, shall be guilty of a violation of the laws of the United States, as they relate to the sale or receipt of stolen motor vehicles."

That is the statute under which each of these Counts are laid.

Now, Gentlemen, the burden in this case is on the Government. **The burden of proof never shifts, under our system of jurisprudence. It is not necessary that** the defendant come into Court and prove his innocence. **The burden of proof always rests upon the Government, in any criminal case; that burden is this, Gentlemen, it is not an impossible burden, it is a burden that the law casts upon the Government and it is this: "Prove the defendant's guilt as to each**

Count in this case, separately and severally, beyond a reasonable doubt.

Now, when I use the term reasonable doubt, Gentlemen, that means beyond a doubt for which a reason can be given, growing out of the evidence. The law does not impose a burden upon the Government, in this, or in any other case, to prove the defendant's guilt beyond a mathematical certainty. It doesn't impose a burden of proof of a defendant beyond all fanciful doubt; but beyond a reasonable doubt, and a reasonable doubt, I define to you is a doubt for which a reason can be given, growing out of the evidence in the case, not beyond a doubt for which you might reach out and find, but a doubt for which a reason can be given growing out of the evidence in this particular case. That is the burden of proof that is on the Government in this case.

Gentlemen, this burden, and in order to—the burden rests upon the Government to prove that the defendant knew, in addition to the fact that it was stolen, and I understand that there was no controversy made, I am not telling you that there was no controversy made by the defendant in this case that the automobiles were not stolen, but I am telling you, as I understand the argument of counsel in the case, that there is no controversy made that the automobiles were stolen. That is one of the evidences. I charge you that "Transported within the meaning of the statute" in so far as these Counts are concerned, will have taken place, if the automobile was, after it was stolen, moved from one state to another, then it was transported in interstate commerce.

Now, Gentlemen, as to whether or not the automobiles were received, or as to Count 5, is concerned, as to whether or not the automobiles were sold, is a

factual matter that will have to be resolved by you. I am not going to purport to invade that province. If, by anything I have said during the course of this trial, or any expression that I may have given way to, or anything that I did, you get the impression that I think that the defendant is guilty or the defendant is innocent, then I want you to put that out of your mind, that is not my responsibility and I don't wish to assume it, that is your responsibility, and I don't want you to get the idea that I believe one way or the other about it, because I do not.

Now, the burden rests upon the Government, in addition to these other things, to prove knowledge that the automobiles were stolen, at the time he received it in so far, as Count 1 and Count 3 and Count 4, is concerned; and at the time he sold it, in so far as Count 5 is concerned. Knowledge on the part of the defendant, and I charge you, this is a matter of law, that the automobile in question was stolen may be established by the circumstances. That is by circumstantial evidence, as well as by direct proof. I charge you that the requirements that he had knowledge relates only to the requirement that he had knowledge that the automobile had been stolen, and it is not necessary in this case in so far as either Count is concerned, that the defendant have knowledge that the automobile moved in interstate commerce.

I charge you, Gentlemen, as a matter of law, that possession of a stolen automobile, may, under proper circumstances be sufficient for you to draw an inference of guilty knowledge on the part of the defendant that the automobile, or automobiles, were stolen. Although mere inadequacy of price, standing alone, is insufficient proof of guilty knowledge on the part of

the defendant, the inadequacy of price may be one of the circumstances that I have just referred to, from which you may infer guilty knowledge, that is the proper circumstances that I have just referred to in my charge.

Now, Gentlemen, this defendant comes into this Court room presumed to be innocent; the defendant has the benefit of that presumption throughout this trial; he has the benefit of it at the present time; the presumption of innocence follows him on with you into the jury room; he has the benefit of it on up until you reach that point in your deliberations, if you do reach that point, that you believe that the Government has proven the defendant's guilt, as to one or more of the Counts, beyond a reasonable doubt. If you reach that point in your deliberations, then the presumption of innocence serves no further purpose.

Gentlemen, there has been some testimony admitted by the Court, from what the Court considers to be accomplices. In that connection I charge you, that an accomplice is defined as anyone who knowingly and voluntarily cooperates with, aids, assists, abets, advises or encourages another in the commission of a crime, regardless of the degree of his guilt. Testimony of accomplices should be considered very carefully, it should be scrutinized with the utmost circumspection, especially if it is uncorroborated; however, an accomplices' testimony should not be rejected, if it is believed. If there are facts and circumstances from which it can be plainly perceived by the jury that these witnesses, criminal though they may be, participants in this crime, though they may be, nevertheless, have told the truth.

Gentlemen, I charge you, that knowledge, in so far as this particular case, or that particular element

of each offense, concerning knowledge that these vehicles were stolen, may be proven by circumstantial evidence as well as by direct proof. I want to charge you what I mean by circumstantial evidence, in so far as that is concerned. Circumstantial evidence is that evidence which tends to prove that the disputed facts, by proof of other facts which have a natural tendency to lead the mind to a conclusion that such disputed facts exist.

Circumstantial evidence, Gentlemen, may be used to establish any material fact in this case.

I have admitted testimony of a witness in this case, Gentlemen, what was offered as an expert witness. As to whether any individual is competent as an expert is a legal matter for the Court to determine. That is, as to whether or not his learning and training and knowledge is greater than that of an ordinary man. What weight will be attached to his testimony, is a matter for you Gentlemen to decide.

Gentlemen, after you consider all the evidence in the case, and you must consider all of it, if after you consider all of it, you believe that the Government has sustained its burden in proving the defendant, Herman Roberson's guilt, as to one or more of these counts, beyond a reasonable doubt, then the form of your verdict would be, "We the jury, find the defendant, Herman Roberson, guilty as charged in Count— numbered blank; and there is a place for whatever you consider to be appropriate of the indictment. And one of your members sign it as Foreman.

If, on the other hand, you feel that the Government has failed to sustain its burden in proving the defendant's guilt beyond a reasonable doubt, as to any of the Counts in the case, the form of your verdict, then, would be: "We the jury, find the defendant

Herman Roberson, not guilty." One of your number signing as Foreman. Your verdict, Gentlemen, must be unanimous. It cannot be a verdict of a majority of you. I am going to furnish you a form of verdict you can use. It is in legal form it is not necessary however, you can put your own form, if you wish to.

All right, now, if you Gentlemen will, prior to the time I submit this case to you, I want to give the Attorneys an opportunity to object or except to any portion of this charge that they may wish to. Step into the jury room. Do not commence your deliberations yet.

The Court:

All right. State your objections.

Mr. Varner:

We are satisfied.

Mr. Fuller:

Your Honor, before I state my objections I would like to make a showing on the record about these jury charges?

The Court:

All right.

Mr. Fuller:

I would like to show that prior to the time that the Court recessed at the close of evidence on both sides, prior to the time any arguments were commenced, that as Attorney for defendant, Herman Roberson, I handed to the Court charges numbered A through T, that the Court after approximately two minutes of the argument by the first Government At-

torney, that is Mr. Varner, after approximately two minutes of that argument the Court asked me if I had furnished the Government Attorney with a copy of the charges, and that I did say that I had not, but I would do so, that Your Honor stated then that it was too late for me to hand them a copy of the charges and for that reason Your Honor, has denied the charges, and that I could file them. Now, I would like to show this: That at the last trial of this case, I handed to the District Attorney of this Court an exact copy of each one of those charges; that to my knowledge the District Attorney still has a copy of those same identical charges. If there is any variation in the charges, it is not known to me. I had asked my Secretary to copy them exactly, they are in the record and I would like for the Court to compare them with the charges that are in the previous record, and see whether or not the District Attorney has in his possession, or on his table, a book containing those.

The Court:

There is no need to do that, that was on the last trial, we are interested in this trial. State your objections and exceptions.

Mr. Fuller:

For that reason.

The Court:

Let the Court say this, the Court doesn't feel it incumbent on him to instruct his attorneys what the federal rules are, the rules require that counsel shall —at the same time copies of requests shall be furnished the adverse parties, and you stated that you

had not furnished the District Attorney copies of them and that was after the arguments had started in this case.

The Court declines, and continues to decline to give any of those charges on the basis that you did not furnish it on the original ground, that I covered them in my oral charge, and on the additional ground that they do not state correct propositions of law, and on the additional ground that they are adverse and not applicable.

Mr. Fuller:

In Your Honor's charge, Your Honor stated that if the jury found that at the time the defendant received the automobiles referred to and described in Counts 1, 3, and 4, of the indictment, that the jury would then make a finding accordingly. My objections and exceptions to the Court's charge being that the Court did not instruct the jury that if at the time, or if the defendant did actually receive the automobile. My understanding of Your Honor's charge was, that at the time he received—

The Court:

I will straighten that out, if I said that I will straighten that out.

Mr. Fuller:

My impression was that Your Honor indicated no question in his own mind as to whether or not defendant had received and had sold it.

The Court:

All right, anything further?

Mr. Fuller:
That is all.

The Court:
Have the jury come back in. Don't put them in the box.

Mr. Davis:
Your Honor, may I say I have not even yet received copies of those charges.

The Court:
All right. Gentlemen of the jury, it is necessary that you come all around.

Gentlemen, the comment has been made that during the Court's charges to you, the Court made reference to—at the time the defendant—in so far as Counts 1, 3, and 4 are concerned, received the motor vehicle. The Court charges you that I do not, and did not, intend to at that time, and do not now attempt to charge you or to state what my opinion is as to whether the defendant received these motor vehicles that are referred to in these counts. I am not charging you that he did receive them. That is a question for you to decide. And, if the Court did say in its charges that the defendant did receive them, it was inadvertent, and I am not charging you that, and I want to leave no doubt in your minds.

Now, all right, you may retire to the jury room to make your deliberations in this case. The alternates will remain in the Court room.

The Court:
Gentlemen, have you reached a verdict?

The Jury:
We have, Your Honor.

The Court:
Let the Clerk read the verdict.

Clerk:
"We the jury, find the defendant, Herman Roberson, guilty as charged in Counts No. 1, Count No. 4, and Count No. 5, of the indictment."

GEORGE ROBERTSON,
Foreman.

Thereupon, Court was adjourned until the following day when the case was taken up again.

Note

Page 306 is on
Card 6

16006

PLAINTIFF'S EXH. 2.

U. S. Dist. Court—Middle Dist.—Ala

Date 3-30-57

Bill of Sale.

The State of Alabama,
Montgomery County.

Know All Men By These Presents, That I, Bill Rhodes, Rt. 4, Montgomery, Alabama in consideration of Twenty Nine Hundred Ninety Five and no/100 Dollars, to be paid by Major Kenneth E. Joye, the receipt whereof is hereby acknowledged, do bargain, sell and deliver to said Major Kenneth E. Joye the following goods and chattels, to-wit:

Cadillac "60" Special 4-Door	$ 2,995.00
Motr #516095134	
Traded 1949 Olds "98"	1,195.00
Check	1,800.00

Witness my hand and seal this 11 day of December, 1953.

BILL RHODES (L.S.).

Executed in the presence of:

C. M. NEAL,

(Seal) Notary Public, Montgomery County, State of Alabama.

Note

Page 308 is
on Card 6

DEFENDANT'S EXH. 1.

U. S. Dist. Court—Middle Dist.—Ala.

Date 3-30-57

Bill of Sale—Automobile.

A533-195
Our File Number

Know All Men By These Presents:

In consideration of Twenty-One Hundred and no/100 Dollars ($2100.00) to us in hand paid by Bill Rhodes the receipt of which is hereby acknowledged, we do bargain, sell and convey to the said Bill Rhodes one (Make) 1951 Caillac (Style) Fordor as is. Factory No. ....., Motor No. 516095134.

And do hereby covenant and agree to warrant and defend the sale of said automobile unto the said Bill Rhodes against any lawful claims and demands of all and every person or persons whatsoever.

(This car is sold as accepted and is not guaranteed.)

Witness our hand this 9th day of December, 1953.

(Signed) TRUCK INSURANCE EXCHANGE,
By McPHAIL, HAIGLER & McGLYNN,
By HAROLD McGLYNN, JR.

Witnesses:

.....

.....

State of Alabama,
County of Montgomery. ss.

On this 9th day of December 1953 before me personally came Harold McGlynn, Jr., to me known, and known to me to be the individual described in and who executed the foregoing instrument and he thereupon duly acknowledged to me that he executed the same.

FRANCES B. SKINNER,
(Seal) Notary Public.

My Commission Expires January 22, 1955.

Delivery Receipt.

Received of Truck Insurance Exhcange the above described automobile in satisfactory condition.

X. BILL RHODES.

Date ..... 19...

Note

Pages 311-313
are on Card 6

HOME FINANCE CO.
222 BIBB ST.
PHONE 4-0211

No 55918

Montgomery, Ala., 4-15 1953 Acct. No 502

RECEIVED FROM [redacted]

For

Previous Bal. $ 242.80

Amount Paid $ 73.00 Thank You

Balance Due $ 169.80 By

HOME FINANCE CO.

By

315

[Page 316½ on card 6]

U. S. DIST. COURT - MIDDLE DIST. - ALA.

DEFENDANT'S EXH. 5

DATE 3-30-57

HOME FINANCE CO.
222 BIBB ST.
PHONE 4-0211

Cash

No 55918

Montgomery, Ala., 4-14 1953 Acct. No 502

RECEIVED FROM J. C. Roberts
Seventy Three & 50/100

For

Previous Bal. $ 242.50

Amount Paid $ 73.50 Thank You

Balance Due $ 169.00 By HOME FINANCE CO.

[Page 316½ on card 6]

U. S. DIST. COURT - MIDDLE DIST. - ALA.
DEFENDANT'S EXH. 5
DATE 3-30-57

No. Aug 11, 1953

Received from Bill Hadden

One Hundred & 00/100 ——— *Dollars,*

For Cash for Selling 5 Cars 100

AMOUNT ACCT. . . $ 100.00

AMOUNT CREDIT . . $ 100

BALANCE DUE . . . $ ———

Per Johnson Motor Co
E W Neal

MERPACO, NO 1000 DUP REC. BOOK

U. S. DIST. COURT - MIDDLE DIST. - ALA.

DEFENDANT'S EXH. 8

DATE 3-30-57

318

NOTE

[Pages 316-317 are on Card 6]

No. Aug 11 1913

Received from Bill Rhodes

Less than a thousand 00/100 ——— Dollars

For Repay Loan on 51 Ord

AMOUNT ACCT. . $ ——

AMOUNT CREDIT . . $ 200.00

BALANCE DUE . . . $ ——

By Edward Reed

319

REORDER, NO. 1005 DUP. REC. BOOK

9

3-30-57

Note

[Page 320 is on Card 6]

[Page 321 is on Card 6]

Form 117 BILL OF SALE--8-50--4M--Printed and for sale by Dixie Office Supply Co., Montgomery, Ala

The State of Alabama

County.

BILL OF SALE

KNOW ALL MEN BY THESE PRESENTS, That

in consideration of

$ 2500.00 DOLLARS, to

paid by Bill Rhodes, the receipt whereof

is hereby acknowledged, do bargain, sell and deliver to said

the following goods and chattels, to-wit:

1951 60 Special Cadillac

Mtr # 51-60 95134

Witness my hand and seal this 8 day of June 1953

Executed in the presence of:

Notary Public of Montgomery Co. Ala
Harris B. Roberson

G. L. Thomas Phone 65013
Birmingham Ala Phone 5248
R-F.D. # 1

U. S. DIST. COURT - MIDDLE DIST. - ALA.

PLAINTIFF'S EXH. 1

DATE 3-30-57

308

BILL OF SALE

SOLD BY

McBRAYER MOTORS

16006

314 MADISON AVENUE — MONTGOMERY, ALABAMA

SOLD TO Chas Haggard

Address

City Prattville State Ala. Salesman

Date March, 1953

Car No.

MOTOR NO. SERIAL NO.

1945 Chev Tour Door.
ME # 7AA600997

Amount Financed

Engine Type

Sold As Is

Sold With 30% Guarantee For 30 Days

ARTICLE TRADED IN	DESCRIPTION AND NUMBERS
	For Resale
	By Jack Hamil

AGREEMENT	AMOUNT
Cash Price	1600 00
Insurance	
Carrying Charge	
Total Time Price	
SETTLEMENT	
Previous Deposit	
Cash on Delivery	
Trade-In Allowance	
Payments	
At $	Bal
To Begin	
TOTAL	640 00

BERPA-O 638

U. S. DIST. COURT - MIDDLE DIST. - ALA.
PLAINTIFF'S EXH 3
DATE 3-30-57

PURCHASER'S STATEMENT (Do Not Record)

DATE 3-30-57

(Name of Dealer)

Married (✓) Number 1
Single ( ) Dependents 1

Date of Birth 46 years

(Number) (Street) (City) If R. F. D. near what school, cross roads, etc.)

Phone No. ____ Previous Address 2 Anderson Ct. How long 6 yrs.

If less than one year, how long ____ Present Business Address ____ Phone No. ____

Employed now by Alla (Name of Firm) How long 5 years Badge No. ____

Occupation Refinishing Expert Income $ 93.00 Week Month Date Received ____

If Married, employed by ____ Occupation ____ How long ____

Trade Union ____ Lodge Affiliation Masonic Lodge (Name and No.) (City)

Total Monthly Expenses $ ____ Name other sources of income ____

Savings Accounts with Ala. Nat. Bank (Bank) Branch ____ On Deposit $ ____ Pass Book No. ____

Checking Account with ____ (Bank) (Street Address) Branch ____ (Name)

Purchased last car from Robertson Motor Co (Name Dealer) (City) (State)

If Small Finance Co., if any, were payments made thereunder? Commercial Banking Co.

Have you ever suffered an automobile insurance loss? No What kind of loss ____

Trade References with whom I (we) have had Credit Dealings:

1 Business Reference Ford Dearborn, Ala National Bank
(Name) (Street) (City) (State) (Phone No.)

2 Business Reference Alla Finance Co

3 Personal Reference Jim Fox Montgomery

Next Relative not living with you Laurence Satchell Anderson Ct. Montgomery
(Name) (Address)

Number of Acres	Improved Yes or No	Total Cash Value	Amount of Encumbrance	County	State	Title in Name of

I We Own the following property ____

Address of property ____

Car will be used for: Business and pleasure ( ) Livery or Renting ( ) Will be kept in Private Garage ( ) Public Garage ( )

I owe $ ____ worth of machinery, $ ____ worth of live stock. Total amount owing on machinery and live stock $ ____

My income this year will be $ ____ from Grain, $ ____ from Hay, $ ____ from Fruit, $ ____

from Dairy, $ ____ from other.

My net income last year was $ ____ I owe to Banks and others $ ____

The undersigned warrants the truth and accuracy of the foregoing information.

Purchaser Signs ____

Dated this ____ day of ____, 19 ____ By ____
(Official Title, If Company)

U. S. DIST. COURT - MIDDLE DIST. ALA.

DEFENDANT'S EXH. 2

DATE 9-30-57

311

Duplicate Original—
To be filed or recorded according to State Law.

CONDITIONAL SALE CONTRACT

[redacted] (Contract Number)

The undersigned seller hereby sells, and the undersigned purchaser or purchasers jointly and severally hereby purchase (s), subject to the terms and conditions hereinafter set forth, the following property, complete with standard attachments and equipment delivery and acceptance of which is hereby acknowledged by purchaser, or purchasers, viz:

	New or Used	Year Model	No. Cyl.	Make Trade Name	Type of Body If Truck, Give Tonnage	Tag No.	Motor No.	Manufacturer's Serial No.
ONE	used	50	8	Oldsmobile	"88" 2 dr		508A2371	

For a total time price of $ 2067.00 payable as follows: $ 255.00 on or before delivery of said automobile and (X) do by these presents promise and agree to pay to the order of [redacted] or assigns, at the office of HOME FINANCE CO., the balance of the purchase price, viz: $ 1812.00 in 24 installments of $ 75.50 and ____ installments of $ ____, and ____ installments of $ ____, the first of said installments being due and payable on the 1st day of May, 1953, and one of said installments being due and payable on the same day of each successive week, semi-month or month, thereafter until all are fully paid; it being understood and agreed that the final installment payable hereunder shall equal the amount of the deferred balance then remaining due.

1. Title to said property shall not pass to purchaser until said amount is fully paid in cash.

2. No transfer, renewal, extension or assignment of this contract or any interest thereunder, or loss, injury or destruction of said property shall release purchaser from his obligation hereunder; assignee shall be entitled to all the rights of seller.

3. In the event purchaser defaults on any payment due on this contract or fails to comply with any condition of this contract or a petition in bankruptcy, receivership or insolvency be instituted against the purchaser or his property, or seller deems the property in danger of misuse or confiscation, the full amount shall be immediately due and payable, the seller's acceptance after the full amount may have become immediately due and payable as hereinabove provided, of any installment or payment shall not be deemed to alter or affect the purchaser's obligations and/or the seller's rights hereunder with respect to any subsequent payments or default therein.

4. No warranties, expressed or implied, representations, promises or statements have been made by seller unless endorsed hereon in writing.

5. Purchaser shall keep said property free of all taxes, liens and encumbrances; shall not use same illegally, improperly or for hire; shall not remove same from the state without permission of seller; shall not transfer any interest in this contract or said property. The proceeds of any insurance, whether paid by reason of loss, injury, return premium or otherwise, shall be applied toward the replacement of the property or payment of said obligation, at the option of the seller. Seller may insure said property against fire and theft, or any accidental physical damage to the car to protect purchaser, seller or seller's assignee. Purchaser agrees to pay the premium upon demand and that on failure to do so, payment of said premium shall be secured by this contract.

6. Time is of the essence of this contract, and if purchaser defaults in complying with the terms hereof, or seller deems the property in danger of misuse or confiscation, seller, his agent or attorney, may take immediate possession of said property, without demand (possession after default being conclusive), together with any equipment or accessories thereto; and for this purpose seller may enter the premises where said property may be and remove same. Seller may resell said property, so retaken, at public or private sale, without demand for performance, with or without notice to purchaser (if given, notice by mail to address being sufficient), with or without having such property at place of sale, and upon such terms and in such manner as seller may determine; seller may be the purchaser at public sale. From proceeds of any such sale, seller shall deduct all expenses for retaking, repairing and selling such property, including a reasonable attorney's fee. The balance thereof shall be applied to amount due; any surplus shall be paid over to purchaser; but should the proceeds realized from the sale above referred to be insufficient to pay all sums remaining unpaid hereunder, including the expenses caused by such repossession, removal, preparation, storage, offer and sale, including a reasonable attorney's fee incurred in taking in possession of said property above referred to in said contract in or about the sale thereof, or in collecting in any manner any sums which may be due and owing hereunder, purchaser or purchasers hereunder agree to pay any deficiency as damages for use of said property; the waiver or indulgence of any default shall not operate as a waiver of subsequent defaults. Time is of the essence of this contract.

7. Seller shall have the right to enforce one or more remedies hereunder, successively or concurrently. Any provision of this contract prohibited by law of any state shall as to said state be ineffective to the extent of such prohibition without invalidating the remaining provisions of this contract.

8. No warranties are made by the seller except that Seller has a good title to the property sold hereunder.

9. Purchaser agrees to take good care of said automobile and to keep it in good repair and good working order and purchaser further agrees that in the event the said automobile is damaged by collision or otherwise, any and all such claims for such damages are hereby transferred to the seller and said seller will have a right as assignee of the said cause of action to proceed against anyone liable for said collision and be allowed to collect said damages, if any, to the use the purchaser and whatever amount is recovered as a result of said suit or compromise is to apply on the purchase price of this contract. The purchaser waives all claims of exemptions for the payment of the purchase money and attorney's fees hereunder as provided by the laws of the State of Alabama or any other State.

10. This contract and promise shall be construed as a negotiable instrument, and the rights and liabilities of all parties interested therein shall be construed and determined accordingly.

11. As additional security for the payments herein agreed to be made the purchaser does hereby assign all wages and salaries hereafter payable to said from any source, so long as any balance of said payments remains unpaid.

Executed in duplicate, one copy of which was delivered to and retained by purchaser, this 17th day of March, 1953.

Norman Hatchett — 7 B Front St. Mobile, Ala.
(Purchaser's Signature) (Title if Company) (Street) (Town) (State)

Mc Brayer Hamel Motors
(Seller's Signature) (Title if Company) (Street) (Town) (State)

Jack Hamel
(Witness)

Sign In Ink

DEALER'S RECOMMENDATION, ASSIGNMENT AND GUARANTY
(With Recourse)

To HOME FINANCE COMPANY

For value received, undersigned does hereby sell, assign and transfer to HOME FINANCE COMPANY, his, its or their right, title and interest in and to the within contract, herewith submitted for purchase by it, and the property covered thereby and authorizes said HOME FINANCE COMPANY, for its own use and benefit, to do any and all thing necessary to collect and discharge the same.

The undersigned certifies that said contract arose from the sale of the within described property, warrants that title to said property was at the time of sale, and is now vested in the undersigned free of all liens and encumbrances; that said property is as represented to the purchaser of said property by the undersigned and that statements made by the purchaser of said property on the statement form attached hereto are true to the best of the knowledge and belief of the undersigned.

In consideration of your purchase of the within contract, undersigned guarantees payment of the full amount remaining unpaid hereon, and covenants if default be made in payment of any installment herein to pay the full amount then unpaid to HOME FINANCE COMPANY upon demand. Liability of the undersigned shall not be affected by any settlement, extension, forbearance of terms of the within contract effected with, or by the discharge or release of the obligation of, the purchaser or any other person interested, by operation of law or otherwise. Undersigned waives notice of acceptance of this guaranty and notices of non-payment and non-performance.

Mc Brayer Hamel Motors by Jack Hamel
(Seller's Signature) (Title, if Company)

312

Back of Exhibit 2

U. S. DIST. COURT - SOUTHERN DIST. - ALA.
DEFENDANT'S EXH. 2
DATE 3-30-57

BILL OF SALE

HAYDEN

McBRAYER MOTORS

314 MADISON AVENUE — MONTGOMERY, ALABAMA

SOLD TO NORMAN HATCHETT

Address 7-B FROST ST — Date 3-17-53

City MONTGOMERY — State ALA — Salesman — Car No.

CAR SOLD	DESCRIPTION	MOTOR NO.	SERIAL NO.	AGREEMENT	AMOUNT
1950 OLDSMOBILE 88 TUDOR		508A1371			

Amount Financed 1240.00

Financed By Home Finance Co

Sold As Is

Sold With 50% Guarantee For 30 Days

ARTICLE TRADED IN	DESCRIPTION AND NUMBERS
1950 Plymouth 4 Dr	

Cash Price	1495.00	
Insurance	4	
Carrying Charge	57.21	206.71
Total Time Price	2967.00	
SETTLEMENT		
Previous Deposit		
Cash on Delivery	1000	255.00
Trade-In Allowance	15.00	
24 Payments		
At $ 15 50 Each		
To Begin 1 May 1953		
		1255.00
TOTAL		

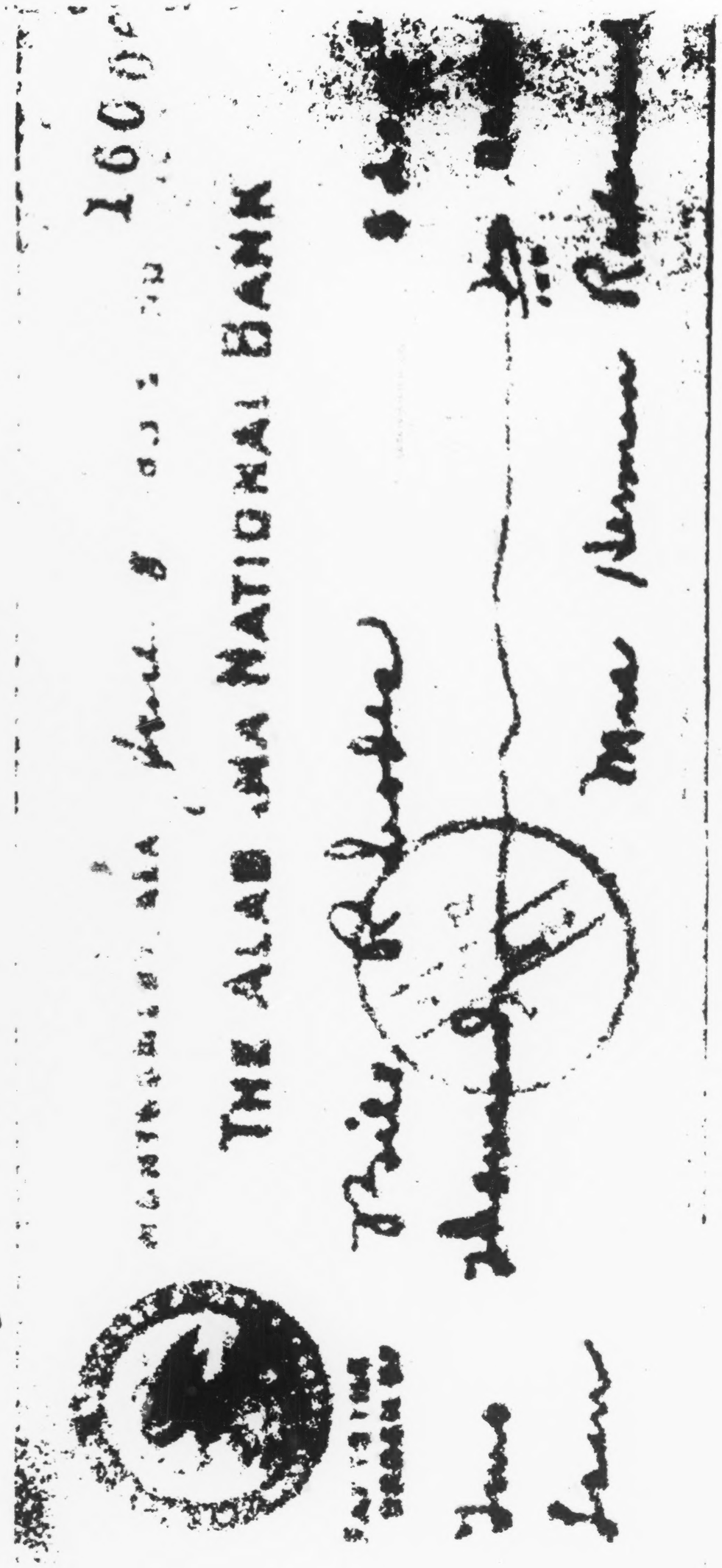
BEBPACO 888

U. S. DIST COURT - MIDDLE DIST. - ALA.

DEFENDANT'S EXH. 3

DATE 3-30-57

313


THE ALABAMA NATIONAL BANK
MONTGOMERY, ALA.

NC— 3-53M—1 52—SHORT CHATTEL NOTE-MORTGAGE—Printed and for sale by Brown Printing Co., Montgomery, Ala.

Montgomery, Ala., 19

ON OR BEFORE THE 1st day of September 19 53, I promise to pay Hermon Robinson

the sum of 2000.00 Dollars, value received.

And I agree to pay attorneys' fees if this indebtedness is enforced by suit, and waive in favor of this note costs of suit and attorneys' fees the benefit of all laws exempting personal property from levy and sale and choses in action from garnishment.

Bill Robinson (Seal.)

(Seal.)

THE STATE OF ALABAMA, Montgomery COUNTY.

WHEREAS, I am indebted to Hermon Robinson

in the sum of 2000.00 Dollars

evidenced by my promissory note of even date herewith and due on the 1 day of Sept. 19 53, and to secure the payment of the same I hereby bargain, sell and convey to the said Hermon Robinson the following property, upon which there is no incumbrance, to-wit: One 1951 Cadillac 6 Pass Motor # 51-6095134.

to have and to hold unto said
upon this condition: That if said note is paid when due, this instrument shall be null and void, otherwise to remain in full force, and the said
are hereby empowered to seize said property, without process, and after giving five days' notice at three public places in the county, to sell the same at public outcry to the highest and best bidder for cash, and apply the proceeds to the discharge of said debt and cost of collection, and pay balance to

Given under hand, this day and date above written.

Witness: Bill Robinson (L. S.)

(L. S.)

(L. S.)

U. S. DIST. COURT - MIDDLE DIST. - ALA.
DEFENDANT'S EXH. 7
DATE 3-30-57

U. S. DIST. COURT - MIDDLE DIST. - ALA.
7

317

/s/ BILL RHODES

THE ALABAMA NATIONAL BANK

MONTGOMERY, ALA.

MR OR MRS HERMAN ROBERSON
RT. 4, NARROW LANE RD.
MONTGOMERY, ALA.

CHECKS		DEPOSITS	DATE	BALANCE
Amount Brought Forward			DEC 30 '52	4,191.30
33.00-	19.20-	2,185.60	JAN 1 '53 2	8,324.50
7.50-		120.00	JAN 2 '53 1	8,437.00
753.50-	1.25-			
25.02-	12.50-			
37.00-	30.00-			
8.70-		562.50		
		5,011.26	JAN 4 '53 8	13,142.79
6,000.00-	1,850.00-			
362.00-	9.60-			
22.40-	78.90-			
41.06-	16.40-			
14.63-	10.00-			
31.00-	45.74-			
29.63-	9.73-			
16.78-		1,608.70	JAN 5 '53 23	6,213.62
1.84-	1,155.00-			
400.00-	1,100.00-		JAN 6 '53 27	3,556.78
1,630.00-	2,000.00-			
15.11-	38.28-			
6.22-	113.37-			
		3,600.00	JAN 8 '53 34	3,353.08
490.00-	75.90-			
95.61-	10.00-	1,500.00	JAN 9 '53 30	4,182.98
5.59-	57.1-		JAN 10 '53 41	4,119.98
25.00-				
8.00-	35.00-			
307.89-	70.00-			
869.21-	8.36-			
21.90-			JAN 11 '53 48	2,825.38
19.46-	8.00-			
69.22-	24.40-		JAN 12 '53 52	2,704.58
116.00	12.80-		JAN 13 '53 54	2,590.90
251.00-	56.02-		JAN 16 '53 56	1,243.78

321

PLEASE EXAMINE AT ONCE. IF NO ERROR IS REPORTED IN TEN DAYS THE ACCOUNT WILL BE CONSIDERED CORRECT.

322

STATEMENT

Cuthbert, Ga., June 8, 1953

Mr Herman Roberson
Montgomery

In Account With

C. R. DIXON, D. V. M.

PHONE 80

6-8 Visit and treatment mare 6 00

Paid in full-
C. R. Dixon
6-8-53

61-36
323

THE FIRST NATIONAL BANK
OF MONTGOMERY

No. 1063

MONTGOMERY, ALA. April 12th

PAY TO THE ORDER OF M. Brazer. Hamel Motors $ 2265

Twenty Two Hundred + Sixty Five ——— 00/100 DOLLARS

Herman Robinson

U. S. DIST. COURT - MIDDLE DIST. - ALA.
DEFENDANT'S EXH. 13
DATE 4-8-57

MONTGOMERY AREA

BANK OF MONTGOMERY

OUR DATE 4/7/53

AMOUNT

3290.00

3246

U. S. DIST. COURT - MIDDLE DIST. - ALA.
DEFENDANT'S EXH. 14
DATE 4-8-57

Filed Apr. 8, 1957.

United States District Court for Middle District of Alabama, Northern Division.

United States of America,
vs. Criminal No. 10,747
Herman Roberson.

We, the Jury, find the defendant Herman Roberson guilty as charged in counts numbered 1-4-5 of the indictment.

This the 8th day of April, 1957.
GEO. ROBERTSON,
Foreman.

DEFENDANT'S MOTION IN ARREST OF JUDGMENT, IN SAID COURT.

Filed Apr. 9, 1957.

(Title Omitted)

To The Honorable Frank M. Johnson, Jr., Judge of said Court:

Now Comes the defendant, Herman Roberson, after the jury's verdict has been received, but before judgment of the Court, and moves in arrest of judgment, for the following reasons, separately and severally:

1. For that said verdict is contrary to the overwhelming weight of the evidence.

2. For that said verdict is contrary to law.

3. For that said verdict is inconsistent.

4. For that counts One and Three of the indictment must have stood or fallen on the same evidence, and the jury in acquitting the defendant as to Count Three of the indictment showed that it did not believe the evidence of the Government as to said Count Three, yet, on the other hand found the defendant guilty on Count One of the indictment based on the same evidence.

5. For that the Court committed manifest error in instructing counsel for the defendant, in the presence of the jury that the Court would not permit defense counsel to further go into the examination of the Government's witnesses Hayden McBrayer and Jack Hamil, as to matters of evidence which the Court had permitted the United States Attorney to examine such witnesses on, the Court stating in substance, "I will not further permit you to badger these witnesses, they are not on trial and I want the jury to know that." That it was vital to the defense of this defendant, that all pertinent and relevant matters concerning these witnesses in behalf of the Government be gone into. That defense counsel stated, unchallenged, in the opening statement of counsel to the jury in this case that the defense expected to prove that said Government witnesses actually purchased two of the automobiles involved in this case and as to one of which automobiles this defendant was found guilty of receiving and as to the other of which, this defendant was found not guilty. That such admonition by the Court in the presence of the jury, de-

stroyed this defendant's defense as to Count One of the indictment and thereby deprived him of a fair and impartial verdict.

6. For that the defendant in order to present any evidence in his behalf, was forced to stipulate that the automobiles stolen by Hollis Bryant were the same automobiles that were involved in this case because the Court denied the timely motion of the defendant, for a bill of particulars, such motion being made a month prior to the trial of this case and within only a short time after the mandate of the Court of Appeals for the Fifth Circuit arrived in this Court following that Court's reversal of this case, which motion was denied by this Court by written order of this Court made on the 6th day of March, 1957. In this connection, the Court's attention is called to the fact the defendant verily believes that such a stipulation, being required by this Court before the Court would permit the defendant's witnesses to be heard, was highly prejudicial to this defendant and deprived this defendant of a fair trial.

7. For that the Court prejudiced the jury and inflamed the jury in instructing the jury to disregard the highly improper question of the United States Attorney addressed to the Defendant as to the Defendant's prior conviction, in attempting to eradicate from the jury the effect of such wrongful question, which the United States Attorney asked the Defendant in the presence of the jury knowing full well that the prior conviction of the Defendant was not proper for the consideration of the jury and which question was calculated to prejudice the jury and which did prejudice the jury and which constitutes reversible error

C.A. 2742
6-8-54

U. S. DIST. COURT - M.D.-E. DIST. - ALA.
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under the ruling of the United States Circuit Court of Appeals for the Fifth Circuit in the former appeal in this case. That the Court's efforts to remove this from the jury's consideration, made the matter that much more impressive and convinced the jury beyond all reasonable doubt that the Defendant was a former convict.

8. For that the Court erred to the prejudice of this Defendant in so far as the jury was concerned in refusing to give a single one of the jury charges requested by the Defendant. The Record in the case will show that when the argument in behalf of the Government through Mr. Varner had been underway for approximately two minutes, the Court called the defense counsel to the bench and requested defense counsel to inform the Court as to whether or not copies of the charges had been handed to the United States Attorney prior to the commencement of the argument, and upon being informed that such had not been done the Court ruled that it was too late to furnish copies of the same and that none of such charges would be considered by the Court or given to the jury. That defense counsel, as the Record will show made a showing on the Record which was not disputed that such charges as contained letters for designation, rather than numbers, as did some of the charges, had been presented to the District Attorney on the trial of this case when it was tried approximately a year ago in this Court and that the District Attorney had on his desk upon this trial a copy of the Record of trial on the former case, containing such charges, verbatim, and that presumably the District Attorney still had the copy of such charges presented to him on such previous trial. That the

Court stated, at the time that it was trying this case, at this time and that what had happened at the previous trial in so far as said jury charges having been presented to the District Attorney's office was concerned, was not to be considered and would not be considered and that since said charges had not been again manually handed to the District Attorney that the same would not be considered, but could be filed with the Clerk. That this was manifestly prejudicial towards this Defendant, particularly since said charges included the request for the affirmative charge for the Defendant as to the indictment and to counts one, three, four and five.

Respectfully submitted, prior to judgment and prior to sentence, this 9th day of April, 1957.

WM. J. FULLER, JR.,
CHARLES REYNOLDS,
Attorneys for Defendant, Herman Roberson.

I, Wm. J. Fuller, Jr., attorney for the defendant, Herman Roberson, hereby certify that I have handed a copy of the foregoing motion in arrest of judgment to Hon. Hartwell Davis, United States Attorney for the Middle District of Alabama, prior to filing the same, this 9th day of April, 1957.

WM. J. FULLER, JR.,
(Wm. J. Fuller, Jr),
Attorney for Defendant, Herman Roberson.

The following day, April 9, 1957, Court was convened at 10:00 A.M.

Mr. Fuller:

If Your Honor would permit it, I have one additional ground that I would like to add to my motion. I, as the Court knows, only had from 9:00 o'clock last night, when the jury verdict was returned, until this morning, and I would like to be permitted to add one additional ground to my motion.

I did not want to submit it until I had the opportunity to ask the Court to permit me to add one ground to it.

The Court:

You may state your ground.

Mr. Fuller:

The ground that I would respectfully ask the Court to permit me to add at this time would be, I believe, ground no. 9. I have 8 here in my written motion. The 9th ground would be that the defendant in this case was prejudiced by the Court's failure to declare a mistrial on the ground that the United States Attorney was talking with one of the jurors, whom he named, a Mr. Edwards, in the rest room in this building. And I assign that ground with the 8 grounds that I have in the written motion, and if I might, I would like to be heard on this motion.

The Court:

You may proceed.

Mr. Fuller:

Thank you. The first three grounds were, of course, the general ground that the verdict is not in accord with the overwhelming weight of the evidence

I assume that the Court having submitted the case to the jury would not now be inclined to upset the jury verdict on general grounds. Therefore, I would like to pass on to ground 4 of the motion, which is that the defendant was acquitted on Count 3 in the indictment. Count 3 and Count 1, both stood on the same identical evidence. The jury believed the evidence as to Count 1, but disbelieved the same evidence as to Count 3, otherwise they would not have acquitted the defendant on that Count.

As to the 5th ground, of the motion, I submit to the Court that, Your Honor, made substantially this statement to me: "I will not further permit you to badger these witnesses; they are not on trial, and I want the jury to know that."

In my opening statement to the jury, I stated that we not only expected to prove that this defendant was not guilty of buying the automobiles, but that we expected to prove by the evidence that the two government witnesses, who testified in this case, did buy them.

Your Honor cut off any further proof as to the character and reputation of these two government witnesses. And the Court used in the presence of the jury the term that I was "badgering" the witnesses. I think that unduly prejudiced the jury. I think it had an adverse effect, as far as this defendant was concerned. I think it made the jury feel that I was torturing the Government witnesses unmercifully. I wasn't trying to do that, I was trying to get out of them what they knew, as the Court observed, and I am sure the jury observed, they would not answer if they could help it.

I think that prejudiced that jury. I will go on now, to the 6th ground of my motion. The Court refused

to order the District Attorney to file a bill of particulars in this case. The case came back from the Circuit Court of Appeals for the Fifth Circuit. It had only been back in this Court a few days, when I filed that motion. The Court made a written opinion and denied it. When we came to the trial of the case, Your Honor stopped me from offering proof by the witnesses for the defendant, that the automobiles that they knew about were the automobiles in this case, until I finally had to stipulate with the United States Attorney that—

The Court:
Was that on this trial?

Mr. Fuller:
Yes, sir, this trial.—That the automobiles that the witnesses were talking about were the automobiles that were involved in this case. That stipulation is on the record.

Now, this other ground—

The Court:
Now, you used the expression in the 6th ground, you were "forced" by the Court to stipulate with the District Attorney—

Mr. Fuller:
In order to proceed, I don't mean physically forced,—

The Court:
I did not force you, I want the record clear on that.

Mr. Fuller:

All right. I will be glad to discuss that point. Your Honor stated "That unless that witness knows that this is one of these cars in this case, I am not going to permit him to testify." And, then I had to turn around and ask Mr. Davis if he would stipulate that that was one of the cars. This man is still in position of saying to this Court: "I am agreeing that that is one of these cars that were stolen." The witness is in a wrong position. No man ought to have to come into Court and say I agree that that is one of the automobiles that had been stolen; that I am involved in. That is what we had to do in order to go ahead.

The Court:

Is that what gave rise to this—

Mr. Fuller:

Yes, sir.

The Court:

—All right.

Mr. Fuller:

The United States Attorney, after this case had been reversed on the proposition of the conviction of this defendant for a violation of the prohibition law, which the Supreme Court of Alabama has held time and time again, does not involve moral turpitude, persisted in asking this defendant if he had not been convicted.

Now, the Court did instruct the jury to disregard it, that they would not consider it. The Court asked

the jury if they would hold it against him, but Your Honor, that is like saying my name is Bill Fuller, and the next minute I say, Judge, you forget my name, I have just told you.

I don't think if you say a man is a convict, that a man could actually forget it. I don't care what the Court tells them, I think human nature, even though that jury, no doubt, honestly thought "we can forget that man has been convicted." I don't think they could believe that the man had not been convicted. They believed it very strongly.

Your Honor refused every jury charge that I presented to this Court. Your Honor stated, when Mr. Varner had been arguing for approximately two minutes, that Your Honor was refusing to give any jury charges unless I had presented the United States Attorney's office with a copy of the charges. I made a showing on the record, that as to the charges that were identified by letters, that I did give the United States Attorney's office a copy of the charges on the previous trial, and that the United States Attorney had on his desk a copy of the record of trial in this case, at that time, at that very moment, which contained every one, verbatim, every charge that was in the record.

I mention this because in those charges, there has been a request for an affirmative charge, as to the indictment as to each count of the indictment, separately and severally, and Your Honor did say, on the record, that I could file them with the Clerk, but that was as far as I could go. That leaves me now, on this appeal, I get up to the Court of Appeals with this case again, which I hope doesn't happen, but it looks like it is on the way up at this point, they will

say, "Why didn't you ask the Judge for the affirmative charge." I did ask the Judge for this affirmative charge; but the record will not show that he did anything about it. All I can say is Judge said: "I will let you file them, that is all you are going to do."

Thank you.

The Court:

Mr. Fuller, let me state at this time that your written charges were refused because they were not applicable, they were not probative to this case, they were not correct propositions of law, they were covered by the Court in its oral charge, and certain of them confusing and ambiguous, and it appeared from the record that you failed to comply with the rules regarding the furnishing opposing counsel with a copy of the same.

Your motion, severally and separately, on arrest of judgment is overruled and denied.

Mr. Fuller:

May we have an objection, if Your Honor please.

The Court:

The Defendant will rise. Mr. Roberson, do you have any statement to make or does counsel have anything further to say prior to the time the Court imposes sentence on the jury verdict of guilty.

A. No, sir.

The Court:

Do you, or either of you, know of any reason why the Court should not impose sentence on this jury verdict of guilty at this time?

A. No, sir.

The Court:

On the jury verdict of guilty in this case, it is the order and judgment of this Court that you be in the custody of the Attorney General for a period of four years, to stand committed this day.

Mr. Fuller:

Would Your Honor fix the bond.

The Court:

How much bond has he, Mr. Clerk?

Clerk:

$5,000.00 bond.

Mr. Fuller:

We would like at this time to give oral notice of appeal, we will follow that up in writing.

The Court:

All right.

JUDGMENT AND COMMITMENT.

United States District Court for the Middle District of Alabama.

United States of America,
v. No. 10,747.
Herman Roberson.

On this the 30th day of March, 1957 came the attorney for the government and the defendant ap-

peared in person and by and with his attorney of record,

It Is Adjudged that the defendant has been convicted by a jury upon his plea of not guilty, on Counts 1, 4 and 5, on April 8, 1957, of the offense of Violation of Section 2312, Title 18, U. S. C. (Motor Vehicle Theft Act) as charged in the Indictment No. 10,747, and the Court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

It Is Adjudged that the defendant is guilty as charged and convicted, and continued for sentence,

On this the 9th day of April, 1957,

It Is Adjudged that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of Four (4) Years.

It Is Adjudged that

It Is Ordered that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

FRANK M. JOHNSON, JR.,
United States District Judge.

MOTION FOR A NEW TRIAL.

Filed Apr. 19, 1957. 7:48 A.M.

(Title Omitted.)

Now comes the defendant in the above cause, Herman Roberson, and respectfully moves the Court to grant him a new trial in this cause, for the following reasons, separately and severally:

1. Newly discovered evidence, to-wit, that the Government witness, Hollis Bryant, on whose testimony this case rests almost entirely, testified under threats by the Government agents, giving his testimony as it appears in the record, because of such threats.

2. Newly discovered evidence, to-wit, that the Government witness, Vernita Yarnell Phillyaw, whose testimony was relied on by the Government, most strongly, as some corroboration of the testimony of Hollis Bryant, although no longer subject to Governmental custody was nevertheless kept in confinement in the City jail of the City of Montgomery, during the time she was present as a witness in this Court, except, of course while she was actually testifying as a witness. That this high-handed treatment of this witness was calculated to and did wrongfully influence her testimony by not only threats, but by actual carrying out of such threats by such confinement. That such witness was ill at the time and had just recently suffered a Mis-carriage.

3. For that the Court erred in overruling the Motion in Arrest of Judgment duly filed by the defend-

ant on April 9, 1957, and each ground thereof, separately and severally, including ground 9 thereof, made orally by the defendant on the presentation of said motion, as the record will show, such ground 9, being that the Court erred in failing to declare a mistrial because the United States Attorney was talking with Juror Edwards in the restroom during a recess in the trial.

4. For that the Court erred in refusing to give any of the written charges duly handed to the Court prior to the commencement of the arguments to the jury, on the ground that the defendant's attorney had not handed copies thereof to the United States Attorney, when the United States Attorney had a copy of the record of trial in this on the former trial on his table throughout this trial, such record containing copies of all of such charges identified by letters and defendant's attorney offered to hand the United States Attorney copies of such charges, within two minutes of the opening argument by the Assistant United States Attorney and before the United States Attorney had begun his argument, but the Court still refused to give any of such charges, stating, "you may file them with the clerk, but I am not going to give them," in substance, as the record will show.

5. For that the Court erred in refusing to permit the attorney for the defendant to properly cross-examine the witnesses for the Government, McBrayer and Hamil, as the record will show.

6. For that the Court erred in refusing to ask the jury the questions handed to the Court in writing while the Court was qualifying the jury, by the at-

torney for the defendant, separately and severally, and the defendant was thereby prejudiced in the trial, in particular, Juror Edwards was permitted to remain on the jury, it being afterwards disclosed that such juror was a close personal friend of the United States Attorney, and it was this juror that the United States Attorney was talking with in this case in the restroom, during a recess, all as will appear from the record in this case.

7. For that the Trial Judge should have recused himself in this case, in that such Judge was the United States Attorney for Northern District of Alabama, when the case of United States of America vs. Hollis Bryant was under investigation by that office. That such witness was a material witness for the Government on this case and was sentenced in the case at Birmingham, while the present Judge of this Court, Honorable Frank M. Johnson, Jr., was the United States Attorney, there. That this was not known to this defendant until after the trial in this case. This, in the opinion of the defendant, constitutes sufficient ground for a new trial.

The premises considered, this defendant prays that a date may be set for the hearing of this motion and that upon such hearing, that his conviction may be set aside and a new trial granted, before another Court and jury.

This 18th day of April, 1957.

WM. J. FULLER, JR.,
Attorney for defendant, Herman Roberson.

Copy to Robert E. Varner, Asst. United States Attorney, April 19, 1957.

WM. J. FULLER, JR.,
Atty. for Defendant.

MOTION TO DISMISS DEFENDANT'S MOTION FOR NEW TRIAL.

(Title Omitted.)

Now comes the United States in the above-styled cause by and through its attorneys, Hartwell Davis, United States Attorney, and Robert E. Varner, Assistant United States Attorney, and moves the Court to dismiss the Defendant's motion for a new trial heretofore filed in this cause and as grounds therefor, assigns the following:

1. As to ground numbered 1 of the motion (a) the fact that Hollis Bryant was under threats by Government agents is alleged as a conclusion of the pleader. (b) the fact that Bryant gave his testimony because of such threats is alleged as a conclusion of the pleader.

2. The grounds numbered 1 and 2 of the motion are not alleged with sufficient particularity to inform the United States of what wrong its agents are charged or what prejudice resulted to the defendant from any alleged wrongful acts of its agents.

3. The alleged newly discovered evidence is at most merely cumulative in that, if it were true, it

would have been admissible solely for the purpose of discrediting the witnesses Bryant and Philyaw, against both of whom convictions of several felonies and the theft of between 12 and 50 automobiles was proved during the trial as discrediting evidence.

4. There is no allegation in ground number 1 that Bryant testified falsely.

5. There is no allegation in ground number 2 that Philyaw testified falsely.

6. The motion does not show that the alleged newly discovered evidence would probably bring about a different result of the trial.

7. As to ground number 2 of the motion for a new trial, for aught that appears, witness Philyaw was confined in jail by her own request.

8. As to ground number 2 of the motion for a new trial, for that "this highhanded treatment of this witness" is alleged as a conclusion of the pleader.

9. This Court is without jurisdiction to entertain a motion for a new trial on grounds numbered 3 through 7, after the expiration of 5 days from the finding of the verdict in this cause, the Court not having previously fixed a further time in which to do so.—Federal Rules of Criminal Procedure 33 and 45(b).

10. As to ground number 7 in the motion for a new trial, no prejudice is shown to have resulted to the defendant from the fact that the District Judge, formerly as United States Attorney, had prosecuted

to conviction a material witness for the Government in instant case.

11. This Court has no jurisdiction after appeal to the United States Court of Appeals.

UNITED STATES OF AMERICA,
HARTWELL DAVIS,
By ROBERT E. VARNER,
(Robert E. Varner),
Assistant United States Attorney.

I hereby certify that I have served a copy of the foregoing motion on Herman Roberson by mailing a copy of same to Honorable W. J. Fuller, Jr., his attorney of record, addressed to him postage prepaid at 240 Washington Avenue, Montgomery, Alabama.

This 26th day of April, 1957.

ROBERT E. VARNER,
(Robert E. Varner),
Assistant United States Attorney.

Filed Apr. 26, 1957.

ORDER.

Filed May 10, 1957.

(Title Omitted.)

This cause came on to be heard this 3rd day of May, 1957, and was submitted to the Court upon the motion of the defendant Roberson for a new trial, and it appears to the Court from the records thereof that this defendant was convicted by a jury on April 8, 1957, and was on April 9, 1957, in open Court, adjudged guilty as charged and convicted, and was on said date sentenced by this Court. It further appears to this Court from the records thereof that the motion now before the Court was not filed with this Court until April 19, 1957. It was, therefore, not filed within the five-day time as specified by Rule 33 of the Federal Rules of Criminal Procedure, except as to ground one and ground two, which relate to newly discovered evidence. With respect to these two grounds, it appears from the record that at the same time the motion for new trial was filed with the Clerk of this Court, a notice of appeal from the judgment and conviction was also filed with the Clerk of this Court. Therefore, this Court has no jurisdiction to rule upon the motion for new trial in any of its aspects. Nevertheless, because of the possibility of a request being made to the Appellate Court for a remand of this case to this Court and for a suspension of the appellate proceedings so that this Court might rule upon defendant's motion for a new trial, it should now be observed as to grounds one and two defendant fails to allege that either Hollis Bryant (ground one) or Vernita Yarnell Phillyaw (ground two) testified false-

ly and fails to allege that either of these witnesses has recanted the testimony given upon the trial of this case, and also fails to allege the "newly discovered evidence" would, if a new trial was granted, probably bring about a different result.

As to ground three as set out in the motion, this Court observes that the fact that the juror Edwards was acquainted with the District Attorney was made known in open Court to counsel for the defendant prior to the time the jury was selected. Counsel for the defendant failed to excuse juror Edwards and accepted him as a juror on the trial of this case. Further, that the records in this case will reflect that the fact that the United States Attorney and juror Edwards had an occasional conversation, not related to the trial in question, in the men's rest room during a recess of this trial, did not in any way prejudice this defendant or any of his rights.

As to ground four, it should be observed that the charges requested by the defendant were presented too late, according to the rules. However, as the record will reflect, all of the charges that state correct propositions of law were covered by this Court in its oral charge and defendant was not prejudiced by the Court's refusal to give the requested written charges.

As to ground five, the record will reflect that the Court permitted a thorough and extensive cross-examination upon behalf of the defendant as to each and every witness appearing for the Government. The Court did, however, sustain objections to certain questions directed to the witness McBrayer and the wit-

ness Hamil, which questions were immaterial and called for incompetent testimony. The Court did observe, during the course of the trial, that it would not permit any witness—whether they appeared for the Government or the defendant—to be badgered by counsel, particularly on some immaterial matter.

Ground six, as set out in the motion, contains no merit and has previously been discussed.

Ground seven, which relates to the fact that I was the United States District Attorney for the Northern District of Alabama at the time the witness Bryant was prosecuted and convicted and, for that reason, should have recused myself as Judge in this case, is a frivolous ground and nothing is set out—or could be honestly set out for that matter—that would show the defendant was prejudiced by that fact.

This Court is convinced, beyond a reasonable doubt, that the defendant, Herman Roberson, is guilty as found by the jury in this case and that he received a fair trial without prejudice and that the motion for a new trial, should it have been filed within the time provided by the rules, would have been overruled and denied; and it is the opinion of this Court that the matter should not be remanded to this Court by the Appellate Court for the purpose of this Court's ruling upon said motion.

It is, therefore, Ordered and Adjudged that defendant's motion for a new trial be and the same in hereby overruled and denied.

Done, this the 3rd day of May, 1957.

FRANK M. JOHNSON, JR.,
United States District Judge.

NOTICE OF APPEAL.

In the United States District Court for the Middle District of Alabama, Northern Division.

United States of America,
vs. No. 10,747-N.
Herman Roberson.

Name and Address of Appellant: Herman Roberson, Montgomery, Alabama.

Name and Address of Appellant's Attorney: Wm. J. Fuller, Jr., Montgomery, Alabama.

Offense: (Charge by Indictment) Three Counts charging appellant with receiving three different automobiles, moving in interstate commerce, knowing same to have been stolen and One Count charging the appellant with selling an automobile (one of the three just referred to), knowing same to have been stolen, and which was moving in interstate commerce.

Concise Statement of Judgment Appealed From: Judgment of conviction of the appellant on two of the Counts as to receiving and on the Count of selling one of the automobiles. Appellant was again sentenced to Four (4) years confinement, such judgment and sentence being imposed on the 9th day of April, 1957. Appeal is also from order of the Court also made on the 9th day of April, 1957, overruling the appellant's motion in arrest of judgment filed on said date and duly presented to the Court and overruled prior to said judgment of conviction and sentence

being pronounced, as the record in this case will show.

Present Status of Accused: Admitted to $5,000.00 bail, pending this appeal.

Notice of Appeal: I, Herman Roberson, acting by and through my attorney, hereby appeal to the United States Court of Appeals for the Fifth Circuit, from both of the above stated judgments, and do hereby give Notice of such appeal.

This 18th day of April, 1957.

WM. J. FULLER, JR.,
Attorney for Appellant, Herman Roberson.

I, Wm. J. Fuller, Jr., attorney for the above named appellant, Herman Roberson, hereby certify that I have personally handed a copy of the foregoing to Robert E. Varner, Asst. United States Attorney for the Middle District of Alabama, this 19 day of April, 1957.

WM. J. FULLER, JR.,
Attorney for Appellant, Herman Roberson.

Filed Apr. 19, 1957, 7:48 A.M.

AMENDED NOTICE OF APPEAL.

In the District Court of the United States for the Middle District of Alabama, Northern Division.

United States of America,

vs.

Herman Roberson.

Criminal Case No. 10,747-N.

Now comes the Appellant in the above cause, Herman Roberson, and amends his notice of appeal heretofore filed in this cause on April 19, 1957, by adding the following:

Appellant hereby gives notice of appeal to the United States Court of Appeals for the Fifth Circuit, from that certain order of the Court overruling and denying the Appellant's motion for a new trial, said judgment being dated May 3, 1957, and filed with the Clerk of this Court on May 10, 1957, this notice being in addition to said previous notice of appeal on the part of this Appellant, dated April 18, 1957 and filed in this Court on April 19, 1957.

The premises considered, Appellant prays that this amendment may be allowed to the end that he may be permitted to appeal in this case from both the judgment of conviction and sentence of four years confinement imposed by this Court on April 9, 1957, also from order of the Court made on said 9th day of April, 1957, overruling the Appellant's motion in arrest of judgment filed on said date and duly presented to the Court and overruled prior to said judgment of conviction and sentence of this Appellant, as the record will show, and also that this Appellant be

permitted to appeal from the order of the Court overruling his motion for a new trial, said order being dated May 3, 1957 and filed on May 10, 1957, as above stated, in order that this appeal may be taken on only one record of trial, rather than two records being required, all of the foregoing being in the same case.

This 15th day of May, 1957.

WM. J. FULLER, JR.,
(Wm. J. Fuller, Jr.),
Attorney for Appellant, Herman Roberson.

Copy to Lillian Crawford, secretary of United States Attorney for the Middle District of Alabama, personally served, this 16th day of May, 1957.

WM. J. FULLER, JR.,
(Wm. J. Fuller, Jr.),
Attorney for Appellant, Herman Roberson.

Filed May 16, 1957.

MOTION FOR EXTENSION OF TIME TO FILE RECORD OF TRIAL IN THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT.

(Title Omitted.)

To the Honorable Frank M. Johnson, Jr., Judge, District Court of the United States for the Middle District of Alabama:

Now comes Herman Roberson, Appellant in the above entitled cause, and moves the Court to grant at least a 30 day extension of time, within which to get the record of trial in this case completed and filed in the United States Court of Appeals for the Fifth Circuit, and in this connection, now shows unto the Court that this Appellant did on to-wit, the 10th day of April, 1957, request the Court reporter to prepare the transcript of the testimony. That due to the press of other matters and Court attendance at other places, as well as at Montgomery, the Court reporter has not yet been able to complete the transcript, through no fault of this Appellant. That the original appeal in this case was taken by necessity, on April 19, 1957, the ten day period allowed for doing so being about to expire, and 30 days of the 40 day period allowed for filing the record, will expire on May 19, 1957, hence this request for additional time.

WM. J. FULLER, JR.,
Attorney for Appellant.

Copy of above motion delivered to United States Attorney's secretary, Lillian Crawford, this 16th day of May, 1957, before filing.

WM. J. FULLER, JR.,
Attorney for Appellant.

ORDER EXTENDING TIME FOR FILING TRANSCRIPT IN ABOVE CASE.

The foregoing motion having been presented to the Court, the Court does hereby extend the time of filing of the transcript in the United States Court of Appeals for the Fifth Circuit, to the 20th day of June, 1957.

Done this 16th day of May, 1957.

FRANK M. JOHNSON, JR.,
United States District Judge.

Filed May 16, 1957.

COSTS BOND ON APPEAL.

(Title Omitted.)

Know all Men By These Presents: That we, Herman Roberson, principal and Ralph Smith and Toofie Deep, as Sureties, are held and firmly bound unto the United States of America, in the sum of Five Hundred and No/100 ($500.00) Dollars, for the payment of which well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, firmly by these presents; and we and each of us waive our rights of exemptions under the Constitution and Laws of the State of Alabama, as against this bond.

The Condition of the Above Obligation is such, That whereas, the above bounden, Herman Roberson, De-

fendant, was the 8th day of April, 1957 in the United States District Court for the Middle District of Alabama, convicted of the offenses of buying two automobiles then moving in interstate commerce, with knowledge that the same were stolen, and on the 9th day of April, 1957, was sentenced to four years confinement on said conviction, and said Defendant has given notice of appeal from said judgment of conviction, also from the order of the Court overruling his motion in arrest of judgment and from the order of the Court overruling his motion for a new trial, such appeal being to the United States Court of Appeals for the Fifth Circuit, and if the judgment of conviction is affirmed or the appeal is dismissed, and the said Herman Roberson shall fail to pay all costs of appeal then accrued in this case, then this obligation shall be null and void, otherwise to remain in full force and effect.

Given under our hands and seals, this 17 day of May, 1957.

HERMAN ROBERSON,
(Herman Roberson),
Principal.

RALPH SMITH, (L.S.)
Surety.

TOOFIE DEEF (L.S.)
Surety.

Filed May 17, 1957.

APPEAL BOND.

In the District Court of the United States for the Middle District of Alabama, Northern Division.

United States of America,
vs.
Herman Roberson.

Criminal Case No. 10,747-N.

The State of Alabama,
Montgomery County.

Know All Men By These Presents, That we, Herman Roberson, Principal, and as sureties, are held and firmly bound unto the United States of America, in the sum of Five Thousand and No/100, ($5,000.00) Dollars, for the payment of which well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, firmly by these presents; and we and each of us waive our rights of exemption under the Constitution and laws of the State of Alabama, as against this bond.

The Condition of the Above Obligation is Such, That whereas, the above bounden Herman Roberson, was on the 9th day of April, 1957, convicted in the District Court of the United States for the Middle District of Alabama, Northern Div. for the offense of buying two automobiles and selling one of same, said automobiles then moving in interstate commerce, with knowledge that the same were stolen, and on the 9th day of April, 1957, was sentenced to Four years confinement, from which sentence the said Herman Roberson on the 19th day of April, 1957, has given notice

of appeal to United States Court of Appeals for the 5th Circuit.

Now, If the Said Herman Roberson, shall appear and abide such judgment as may be rendered by United States Court of Appeals for the Fifth Circuit and if the judgment of conviction is affirmed, or the Appeal is dismissed, the said Herman Roberson, shall surrender himself to the United States Marshal for the Middle District of Alabama, within fifteen days from the date of such affirmation or dismissal, then this obligation to be null and void, otherwise to remain in full force and effect.

Given under our hands and seals, this the 17th day of May, 1957.

HERMAN ROBERSON (L. S.)
Princ.
RALPH SMITH, (L. S.)
Sur.
D. B. RAINEY, (L. S.)
Sur.
TOOFIE DEEP, (L. S.)
DORIS B. ROBERSON, (L. S.)

Approved:

R. C. DOBSON,
Clerk of the United States District Court for the Middle District of Alabama,
By CHARLES R. HUGHES,
Deputy.

Filed May 17, 1957.

STIPULATION OF DESIGNATION OF RECORD OF APPEAL.

United States District Court for the Middle District of Alabama, Northern Division.

United States of America,
v.
Herman Roberson.

The parties hereby designate the following to be incorporated as the record on appeal in this case:

1. Indictment.

2. Statement of Docket Entries dated March 10, 1956, and April 19, 1957.

3. Amended Motion for Bill of Particulars.

4. Motion to Strike Amended Motion for Bill of Particulars.

5. Argument and proceedings thereon.

6. Order denying Bill of Particulars.

7. Request for voir dire questions.

8. Requested jury charges.

9. Reporter's transcript and exhibits.

10. Verdict.

11. Motion in arrest of judgment.

12. Judgment.

13. Motion for New Trial.

14. Motion to Dismiss Motion for New Trial.

15. Order overruling Motion for New Trial.

16. Notice of Appeal.

17. Amended Notice of Appeal.

18. Motion and order extending time for filing record.

19. This designation of record.

This 12th day of June 1957.

HERMAN ROBERSON,
By WM. J. FULLER, JR.,
(William J. Fuller, Jr.),
Attorney for Appellant.
UNITED STATES OF AMERICA,
By ROBERT E. VARNER,
(Robert E. Varner),
Assistant U. S. Attorney,
Attorney for Appellee.

Filed Jun. 12, 1957.

CERTIFICATE.

United States of America,
Middle District of Alabama.

I, R. C. DOBSON, Clerk of the United States District Court, Middle District of Alabama, do hereby certify that the foregoing pages numbered One to Three Hundred and Fifty-five, both inclusive, contain a full, complete, true and perfect transcript of the proceedings on appeal in the case of The United States of America, Plaintiff, versus Herman Roberson, Defendant, Criminal Case No. 10,747, Northern Division, of the Docket of said Court.

Witness my hand and the seal of said Court at the City of Montgomery, Alabama, on this the 14th day of June, 1957.

R. C. DOBSON,
Clerk, United States District Court, Middle District of Alabama.

(Seal)

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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1957.

HERMAN ROBERSON,
Petitioner,

vs.

UNITED STATES OF AMERICA,
Respondent.

PETITION FOR WRIT OF CERTIORARI

To the United States Court of Appeals for the Fifth Circuit.

W. J. FULLER, JR.,
240 Washington Street,
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Professional Center Building,
Montgomery, Alabama,
TRUMAN M. HOBBS,
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Montgomery, Alabama.

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The decision of the Court of Appeals for the Fifth Circuit is in conflict with decisions of the Supreme Court of the United States, the Supreme Court of Alabama, the Court of Appeals for the Eighth Circuit, the Court of Appeals for the Fourth Circuit, and the Court of Appeals for the District of Columbia, relating to the right of an accused to cross-examine a Government witness as to his past acts of misconduct, when such acts of misconduct are material evidence..... 11

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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1957.

HERMAN ROBERSON,
Petitioner,

vs.

UNITED STATES OF AMERICA,
Respondent.

PETITION FOR WRIT OF CERTIORARI

To the United States Court of Appeals for the Fifth Circuit.

Petitioner prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Fifth Circuit, entered in this case on November 22, 1957, being Case No. 16,626. Subsequent to this judgment of the United States Court of Appeals for the Fifth Circuit, Petitioner filed a Petition for Rehearing in said Court, together with a Motion to Supplement the Record, which Petition and Motion were denied by order dated January 25, 1958 (R. 403).

OPINIONS BELOW.

The judgment of the United States District Court for the Middle District of Alabama is unreported (R. 336-337).

The opinion of the United States Court of Appeals for the Fifth Circuit is reported at 249 F. 2d 737. A copy of said opinion is attached to this petition as Appendix "A". A copy of the judgment of the Court of Appeals is attached hereto as Appendix "B".

GROUNDS OF JURISDICTION.

The judgment sought to be reviewed was made and entered on November 22, 1957 (R. 373). A Petition for Rehearing and Motion to Supplement the Record were filed on January 10, 1958, and the Court entered an order denying the same on January 25, 1958 (R. 375-400, 403). The jurisdiction of this Court is invoked under 28 U. S. C., Sec. 1254 (1).

QUESTIONS PRESENTED FOR REVIEW.

1. Should an accused be denied the right to have inspection by a Court of Appeals of the file used by the United States District Judge, while such judge was a United States Attorney, in prosecuting the chief government witness on this trial who was a member of the same automobile "theft ring" of which accused is allegedly a member, so that the said Court of Appeals may review the ruling of the District Judge in refusing to disqualify himself?

2. Should a United States District Judge, sitting in a criminal case, be disqualified from presiding over the trial of an accused who is allegedly a member of the same automobile theft ring as the chief government witness, who was previously prosecuted by the said judge in another

district where he was United States Attorney, when such previous prosecution has given the judge a prior knowledge of or interest in the facts of the case before him?

3. Where there is strong evidence that a government witness was a participant in the crime charged to the accused, should the accused be denied the right to cross-examine that witness as to his past acts of misconduct which tend to refute his testimony and that of other witnesses as to material facts in the case?

4. Should a mistrial be declared when an accused is asked by the United States Attorney whether or not he has been convicted of "distilling"?

STATUTES INVOLVED.

The following statutes are involved:

28 U. S. C., Sec. 455:

> Interest of justice or judge—Any justice or judge of the United States shall disqualify himself in any case in which he has a substantial interest, has been of counsel, is or has been a material witness, or is so related to or connected with any party or his attorney as to render it improper, in his opinion, for him to sit on the trial, appeal, or other proceeding therein.

28 U. S. C., Sec. 507 (a) (1):

> Except as otherwise provided by law, it shall be the duty of each United States attorney, within his district, to:
>
> (1) Prosecute for all offenses against the United States;

Fed. Rules of Criminal Procedure: 39 (a):

> Supervision in Appellate Court. The supervision and control of the proceedings on appeal shall be in the

appellate court from the time the notice of appeal is filed with its clerk, except as otherwise provided in these rules. The appellate court may at any time entertain a motion to dismiss the appeal, or for directions to the district court, or to modify or vacate any order made by the district court or by any judge in relation to the prosecution of the appeal, including any order fixing or denying bail.

18 U. S. C., Sec. 2313:

Sale or receipt of stolen vehicles: Whoever receives, conceals, stores, barters, sells, or disposes of any motor vehicle or aircraft, moving, as, or which is a part of, or which constitutes interstate or foreign commerce, knowing the same to have been stolen, shall be fined not more than $5,000 or imprisoned not more than five years, or both.

STATEMENT OF THE CASE.

Petitioner was charged in five counts with violation of 18 U. S. C., Sec. 2313, relating to buying and selling stolen automobiles, knowing the same to have been stolen. He was convicted on three counts and sentenced to four years imprisonment. This was petitioner's second trial under the same indictment, his first conviction on four counts and sentence to four years imprisonment having been reversed by the United States Court of Appeals for the Fifth Circuit in **Roberson v. U. S.**, 237 Fed. 2d 536.

Shortly after Petitioner was convicted and sentenced, he learned for the first time that the trial judge who presided over the trial and pronounced sentence, had served as United States Attorney for the Northern District of Alabama at the time the star Government witness, Hollis Bryant (R. 49-98), had been convicted of interstate transportation of stolen automobiles. Bryant was the man who

delivered to Montgomery, Alabama, all of the automobiles involved in Petitioner's trial. Petitioner promptly moved for a new trial on the ground that the District Judge should have recused himself under 28 U. S. C., Sec. 455 because of prior knowledge of or interest in the facts surrounding the case before him (R. 338). The Record does not show any facts concerning the District Judge's prior knowledge of or interest in the case until the averments of Petitioner's motion for a new trial, such facts being unknown to Petitioner until after the trial. The District Judge overruled Petitioner's motion for new trial, and Petitioner made timely appeal to the United States Court of Appeals for the Fifth Circuit.

In the Court of Appeals on Petition for Rehearing, Petitioner entered a motion to supplement the Record in the case by ordering the United States Attorney for the Northern District of Alabama to turn over to the Clerk of the United States District Court for the Northern District of Alabama, for transmittal to the Court of Appeals, the file used by the trial judge in the prosecution of Hollis Bryant. The purpose of this motion was to allow the Court of Appeals to review the ruling of the trial judge on his disqualification. Alternatively, Petitioner prayed that the Court of Appeals remand the case to the Middle District of Alabama with instructions to the District Judge to supplement the Record so that the Court of Appeals might review his decision that he did not have such a prior knowledge or interest in the case as to require that he recuse himself. The Court of Appeals denied Petitioner's motion by order dated January 25, 1958 (R. 403).

Other facts material to the consideration of the questions presented are set out below. These facts are material not only for the errors apparent therein, but also in showing that the trial judge should have disqualified himself.

During the course of the trial Petitioner was asked by the United States Attorney on cross-examination: "Now in 1941, on the 28th day of April, were you convicted of distilling and did you receive a sentence of three years?" (R. 225). Petitioner's objection to this question was sustained but the Court refused to declare a mistrial despite the highly prejudicial question by the United States Attorney.

In rebuttal, the United States Attorney called Jack Hamel as a witness (R. 228-252). It had been Petitioner's contention throughout the trial that the automobiles were purchased and later sold by someone other than himself (R. 80, 83, 104, 131-132, 134, 146, 149-150, 182, 192, 194, 306, 307, 309, 313-314). Petitioner contended that Jack Hamel and his partner, Hayden McBrayer, had been the purchasers and sellers of several of the automobiles, one of them being a car for the receipt of which Petitioner was convicted. Jack Hamel attempted to rebut Petitioner's contention by testifying that the transactions in question had been conducted by Hamel and McBrayer on paper only because McBrayer and Hamel had a good credit rating and Petitioner could not obtain credit in his own name (R. 242). In an effort to show that Hamel's explanation was untrue, Petitioner asked Hamel on cross-examination whether or not McBrayer had run away from Montgomery with financed automobiles (R. 243). Hamel said that McBrayer had not.

The government witness who followed Jack Hamel was Hayden McBrayer (R. 252-264). On cross-examination, the following occurred (R. 258-259):

> "Q. Did you leave Montgomery with the floor planned automobiles that Mr. Barnett had floor plans on?
>
> The Court: I am not going to allow this witness to be intimidated, because he is not on trial, whether or not he had absconded had nothing to do with the guilt or innocence of Herman Roberson.

Mr. Fuller: Your Honor, we think on our impeachment question, that we have witnesses——

The Court: You want to bring in immaterial matters, not pertinent to this case.

Mr. Fuller: We think, Your Honor, that if this man left here with automobiles that were floor-planned, that is an action that is a material matter. We think that we can show that.

The Court: Just a minute, I told you I would not allow you to go into that, it is not pertinent in my judgment. I don't want to hear any more examination on it during the course of this trial for the Government or the defendant.

Mr. Fuller: I am sorry, Your Honor."

It is noteworthy that Petitioner's counsel was stopped here by the judge without benefit of objection from the United States Attorney.

REASONS FOR ALLOWANCE OF WRIT.

The Decision of the Court of Appeals for the Fifth Circuit Relating to the Right of a District Judge to Preside Over the Trial of a Criminal Case Where He Has Prior Knowledge of or a Prior Interest in the Facts Surrounding the Said Case Raises an Important Federal Question Which Has Not Been, But Should Be, Decided by This Court.

This case raises fundamental questions of great importance as to the right of any citizen accused of a criminal act to be tried before a judge who has no prior knowledge of the facts surrounding the case which might give him a preconceived opinion as to the guilt of the accused. The Record shows that Hollis Bryant (R. 49-98) was the person who delivered all of the automobiles connected with the trial of Petitioner to Montgomery, Alabama, where Peti-

tioner lived. Previous to the trial of Petitioner, Bryant had been convicted in the Northern District of Alabama of an offense involving the interstate transportation of stolen automobiles. The United States Attorney at the time of Bryant's conviction was Hon. Frank M. Johnson, the present District Judge for the Middle District of Alabama, who presided at the trial of Petitioner.

As soon as Petitioner became aware of Judge Johnson's connection with the Bryant prosecution he objected to Judge Johnson's failure to recuse himself (R. 340). In denying Petitioner's motion for new trial, Judge Johnson took judicial notice of the contents of the file of the United States Attorney for the Northern District of Alabama. Petitioner is entitled to have review of the trial judge's ruling as to those contents in a court of appellate jurisdiction.

The government argued below, at page 2 of its brief on Petition for Rehearing, that the file of the United States Attorney for the Northern District of Alabama if made available to Petitioner would disclose its "confidential informants on a large auto theft **ring**." (Emphasis supplied.) In fact, however, Petitioner asked only that the Court of Appeals inspect the file. This could in no way expose the government's "informants." Moreover, the government's contention reveals the scope of the alleged theft ring and a logical conclusion from its contention is that the prosecution of Petitioner came about as a result of the investigation of the theft ring by Judge Johnson's office while he was United States Attorney. Petitioner sought to show that in effect Judge Johnson was one of the attorneys who prepared the case against him. Where a United States Attorney prepares a case against a person and then presides over the trial of that person the spirit and letter of 28 U. S. C., Sec. 455, are violated. **U. S. v. Vasilick** (3rd C. 1947), 160 F. 2d 631; **U. S. v. Maher** (D. C.

Me. 1950), 88 F. Supp. 1007. The effect of Section 455 cannot be avoided by the fact that the preparation occurred in one federal district and the trial in another. Yet the trial judge dismissed this ground of Petitioner's motion for new trial as "frivolous" (R. 346).

The Court of Appeals showed more interest in Petitioner's contention. Judge Jones, speaking for the Court, stated that ". . . if the cars, involved in the trial over which the former United States Attorney presided as District Judge were the same as those involved in the investigation made and prosecution conducted by him as counsel for the Government, there might have been presented a situation under which the judge should have disqualified himself" (R. 367). However, the Court of Appeals apparently was reluctant to give aid to Petitioner in his plight of discovering this ground of disqualification too late to bring to the Court any record on which it could have reviewed Judge Johnson's ruling. Petitioner moved the Court of Appeals to supplement the Record before it either by ordering the production of the file on which Judge Johnson based his ruling or by directing Judge Johnson to order its production so that it could be made a part of the record below. There can be no question that an accused is entitled to have government files made a part of the record when such files contain evidence material to his case. **Jencks v. U. S.**, 353 U. S. 657, 77 S. Ct. 1007.

If the Court of Appeals did not have authority to use the direct method of ordering the file itself, it certainly had authority to direct the trial judge to do so under Rule 39 (a) of the Federal Rules of Criminal Procedure and under its own ruling in **Phillips Petroleum Corp. v. Williams**, 159 Fed. 2d 1011.

Assuming that it can properly be shown that Judge Johnson did investigate the alleged criminal acts of Pe-

titioner, there is no doubt that he should have disqualified himself. Yet the predicament in which Petitioner now finds himself is one of inability to show the facts which required disqualification and inability to obtain review of the trial judge's action based solely on the judge's own private knowledge of the facts. It hardly requires argument to show that a trial judge should not be the final arbiter of a question relating to his own disqualification. The Court of Appeals for the Fifth Circuit has held, in **Smith v. United States**, 238 F. 2d 925, 931:

> "... a defendant who, having first been presented with waivers to sign and having waived counsel and the benefit of consideration by a Grand Jury, is permitted by the Court to plead guilty instead of standing trial, is entitled to have the judge before whom he stands approached and act in the case with complete judicial detachment, uninfluenced by conferences in chambers with agents of the prosecution."

One who asserts his innocence is no less entitled to trial by an uninfluenced judge than one who pleads guilty.

With the foregoing authority, we are reduced to a question of the power of a District Judge to take judicial notice of matter which is not a part of any public record. We find no authority allowing him to do so. Furthermore, when such judicial notice is taken, there is no means by which an appellate court can review his ruling except by an inspection of the matter noticed.

We submit that the Court of Appeals for the Fifth Circuit was in error in denying Petitioner's motion to supplement the Record or remand for supplementation below. This is an unusual case and, so far as Petitioner has been able to ascertain, one of first impression in any court. Yet it deals with the right of every accused to have a fair and impartial trial before a judge who has no prior knowledge of or interest in his case.

The Decision of the Court of Appeals for the Fifth Circuit Is in Conflict With Decisions of the Supreme Court of the United States, the Supreme Court of Alabama, the Court of Appeals for the Eighth Circuit, the Court of Appeals for the Fourth Circuit, and the Court of Appeals for the District of Columbia, Relating to the Right of an Accused to Cross-Examine a Government Witness as to His Past Acts of Misconduct, When Such Acts of Misconduct Are Material Evidence.

Another fundamental question raised in this case is the right of one accused of a crime to prove that someone else did the act of which he is accused. Coupled with his right is the right to impeach the testimony of the persons that Petitioner claimed did the act. The testimony of Jack Hamel that he and his partner, Hayden McBrayer, engaged in the automobile transactions for the sole purpose of obtaining credit for Petitioner was directly in conflict with Petitioner's contention that Hamel and McBrayer bought and sold the automobiles. The testimony of Hamel that McBrayer and Hamel's good credit rating was responsible for their connection with the transaction certainly could be refuted with evidence that they did not have good credit rating. What better evidence could there be than a showing that McBrayer absconded from Montgomery with financed automobiles?

The evidence sought to be elicited from McBrayer was material not only in view of Hamel's testimony; it was also admissible to impeach the testimony of both Hamel and McBrayer. The decision of the Court of Appeals for the Fifth Circuit is in conflict with the decision of this court in **Tla-koo-yel-lee v. U. S.**, 167 U. S. 274, 17 S. Ct. 855. It is in conflict with the following decisions of Courts of Appeals of other circuits:

Pullman Co. v. Hall (4th C.), 55 F. 2d 139;
Weisflog v. U. S. (8th C.), 291 F. 2d 339;

Pittman v. U. S. (8th C.), 42 F. 2d 793;
Dist. of Col. v. Chessin (D. C.), 61 F. 2d 523.

It also conflicts with the decision of the Court of Appeals of Alabama in Moomaw v. State, 23 Ala. App. 125, 121 So. 904.

Petitioner admits that he was connected with the transactions in question to the extent of loaning money to McBrayer and Hamel for the purchase of automobiles. The testimony against him was primarily that of Jack Hamel, Hayden McBrayer, and Hollis Bryant (who had stolen the automobiles and delivered them to Montgomery). All of the other government witnesses stated facts consistent with Petitioner's contention. The weakness of the Government's connection of Petitioner with the alleged crimes is indicated by its statement in its Brief on Petition for Rehearing in the Court of Appeals that "Roberson was closely connected with the purchase and the sale of all three cars, whereas Hamel and McBrayer, at most, certainly had nothing to do with the Cadillac" (page 6).

In **Gordon v. United States**, 344 U. S. 414, 73 S. Ct. 369, this Court dealt with a criminal case where the Petitioners' "physical movements as recited by them were not materially different from those related by government witnesses, (but) petitioners gave a different and innocent version of the relationship of their acts to the criminal transactions" (73 S. Ct. 371). This Court stated that (73 S. Ct. 372): "Where, as here, the government's case may stand or fall on the jury's belief or disbelief of one witness, his credibility is subject to close scrutiny." While the **Gordon** case was decided on the basis of the trial judge's denial of a motion to produce the documents which would have affected the credibility of the witness, the real issue was the same as is presented here, i. e., the extent to which an accused may cross-examine one who testifies

against him but at the same time is closely linked with him in the alleged crime. To adhere to a rule which allowed an accused to be convicted on the testimony of those linked with him in the crime, without giving him the opportunity to fully cross-examine, would be an unthinkable miscarriage of justice, especially when the accused seeks to cross-examine such a witness about acts of that witness which are inconsistent with the witness' testimony.

In **Tla-koo-yel-lee v. United States**, supra, this Court reversed the district court of Alaska solely because the accused was not permitted to question a government witness concerning her cohabitation with the only other government witness. Both witnesses were closely linked to the crime. They were the only two witnesses against the accused. The witness whose examination was the subject of review was the wife of another man accused of the same offense but not presently on trial. It is apparent that the reason for the reversal by this Court was the witness' close connection with the alleged crime. The Court said at 17 S. Ct. 356:

> " . . . The whole occurrence at the time of the alleged murder is left in a good deal of confusion, and the credence to be given to the testimony of the woman was of the highest importance."

The government dismisses **Tla-koo-yel-lee** as an authority with the suggestion that the case was not "well litigated" (Brief, page 8). This is no answer. The facts in that case are directly analogous to those now before this Court. The accused was convicted on the testimony of persons who could clear themselves by testifying against him. A different problem would be presented if the District Judge had allowed Petitioner to examine McBrayer about his past misconduct but had limited the scope of such examination to avoid prolonging the trial by repetition. But such is not the case here. Judge Johnson did not limit,

but **refused**, the right of cross-examination on this vital matter; and he did so even though there was no objection from the Government. Not only was material evidence kept out of the case by the trial judge's ruling, but by his spontaneous ruling the judge gave added credence to McBrayer's testimony by holding him out to the jury as unassailable. Likewise, the judge discredited Petitioner's counsel before the jury by making it appear that he was attempting to improperly impeach McBrayer.

The Decision of the Court of Appeals for the Fifth Circuit Relating to the Prejudicial Effect of Remarks of a United States Attorney Raises an Important Federal Question Which Has Never Been Decided by This Court.

This case also raises the important question of the force and effect to be given by the Federal courts to State law. It is true that the question objected to did not specify whether the offense was a State or Federal offense (R. 225-226, 227). However, it is a general rule of evidence that when it is impossible to tell from the phrasing of a question whether or not the answer will be admissible the question is objectionable until a showing is made that the expected answer will be admissible. **Birmingham Ry. Light & Power Co. v. Selhorst**, 165 Ala. 475, 51 So. 568. Under the rule just stated, we must assume that the offense was a State offense, since no contrary showing was made by the Government. The offense was in fact a State offense.

The Court of Appeals held that the evidence sought as to Petitioner's prior conviction for distilling would have been admissible and stated: "The appellant has received a better break than that to which he was entitled" (R. 366). We think that the Court of Appeals was in error and that the question asked by the United States Attorney was so prejudicial, especially in view of the other questions presented here for review, as to require a mistrial.

On the first appeal of this case the Court of Appeals felt more strongly about such cross-examination. Petitioner's conviction was reversed because of improper cross-examination by the United States Attorney concerning Petitioner's previous conviction for violation of liquor laws. **Roberson v. United States**, 237 F. 2d 536. The Court said, at p. 541:

> "While Government counsel conducted the prosecution with commendable vigor, he allowed his zeal to cause him to disregard the precaution so well expressed by Judge Harlan, now Mr. Justice Harlan: 'We may also add ~~that~~ it is incumbent on prosecuting attorneys to be scrupulous in not stepping out of bounds on this sort of cross-examination.' United States v. H. Wool & Sons, 2nd Cir., 215 F. 2d 95, 99."

And further at p. 542:

> "Before we can afford entire verity to a verdict of guilty, that verdict must result from a trial fairly conducted **in every material respect** in accordance with the rules of law, and, inadvertently, this trial was not so conducted." (Emphasis added.)

If ever a case existed where prejudicial remarks by a prosecuting attorney could swing the balance in favor of conviction, then this is such a case.

Since we are dealing with a state offense, this Court must decide whether to allow the State which created the crime to prescribe the scope and effect of it, or whether we are to allow other courts, State or Federal, to give greater effect to the crime than is given to it by the State which punishes for it. The law of Alabama is clear to the effect that the crime **against the State of Alabama** of possessing a still or its product does not involve moral turpitude and is not a fit subject of inquiry for impeachment. The Court of Appeals of Alabama, in **Moore v. State**, 26 Ala. App. 607, 164 So. 761, said:

"The inquiry of witnesses touching their former convictions for the offense of violating the prohibition law in order to impair the weight of their testimony and reflect upon their credibility was improper, prejudicial and injurious. This line of inquiry should not have been attempted or indulged. . . .

". . . It has been repeatedly held that a violation of the prohibition laws of this state, both as to misdemeanors and felonies, does not in contemplation of law involve moral turpitude, hence is not a proper inquiry for the purpose of affecting the credibility of a witness."

This case states the general rule in Alabama. **Baugh v. State**, 215 Ala. 619, 112 So. 157; **Ex Parte Marshall**, 207 Ala. 566, 93 So. 471, 25 A. L. R. 338; **Cockrell v. State**, 32 Ala. App. 618, 29 So. 2d 152.

The acts which are criminal by Alabama law are not criminal under Federal law. Since the United States District Court for the Middle District of Alabama could not have initially punished Petitioner for this crime, it should not be allowed to penalize him beyond the conviction by admitting evidence of his conviction.

In **Fay v. United States**, 22 F. 2d 740, the Circuit Court of Appeals for the Ninth Circuit decided that it should not enlarge the scope of an Idaho statute prescribing the method of impeaching a witness for past convictions in a federal criminal case. Substantially the same situation is presented here. If such a question as was asked by the United States Attorney in this case were allowable, then the federal court would be giving to Alabama law an extra-territorial effect greater than that to which it is entitled in its own jurisdiction.

Even though the question here in issue was not answered, it was prejudicial enough to call for a mistrial.

And the United States Attorney was not content to ask the question only once—he asked it twice. We submit that it is particularly important in a case such as this, with conflicting testimony and with almost all of the testimony against the accused being given by those who would probably benefit from his conviction, that the trial be absolutely free of prejudicial statements or questions by anyone.

CONCLUSION.

For the foregoing reasons Petitioner submits that this petition for a writ of certiorari should be granted.

Respectfully submitted,

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Of Counsel:

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Certificate.

I, Truman M. Hobbs, one of the attorneys for Herman Roberson, petitioner herein, and a member of the Bar of the Supreme Court of the United States, hereby certify that on the ..... day of ....., 1958, I served copies of the foregoing Petition for Certiorari on the several parties thereto as follows:

1. On Hartwell Davis, Esquire, U. S. Attorney for the Middle District of Alabama, by depositing same in the United States mail, first class postage prepaid, addressed to him at his offices, U. S. Government Building, Montgomery, Alabama.

2. On William L. Longshore, Esquire, U. S. Attorney for the Northern District of Alabama, by depositing same in the United States mail, first class postage prepaid, addressed to him at his offices, Federal Building, Birmingham, Alabama.

3. On the Solicitor General, Department of Justice, Washington 25, D. C., by depositing same in the United States mail, air mail postage prepaid, addressed to him at the foregoing address.

Truman M. Hobbs,
Professional Center,
Montgomery, Alabama,
Attorney for Petitioner.

APPENDIX "A."

Opinion.

In the
UNITED STATES COURT OF APPEALS
For the Fifth Circuit.

No. 16,626.

Herman Roberson,
Appellant,

versus

United States of America,
Appellee.

Appeal from the United States District Court for the Middle District of Alabama.

(November 22, 1957.)

Before Rives, Jones and Brown, Circuit Judges.

Jones, Circuit Judge: The appellant, Herman Roberson, was charged under the Dyer Act, 18 U. S. C. A., § 2313, in four counts of an indictment with receiving stolen motor vehicles which were moving in interstate commerce, and in a fifth count with having sold one of the cars. He was convicted on three of the counts for receiving stolen cars and on the count for selling. The conviction was reversed for a new trial. **Roberson v. United States**, 5th Cir., 1956, 237 F. 2d 536. On a second trial Roberson was convicted on two of the counts for receiving stolen cars and on the

count for selling. We now review on appeal this conviction.

On the appeal from the first conviction, one of the assignments of error was based upon the denial by the trial court of a motion for a bill of particulars. It was held that this did not constitute reversible error for two reasons; first, that the motion was filed on the day of the trial rather than ten days after arraignment as required by Rule 7 (f), Fed. Rules Crim. Proc., 18 U. S. C. A.; and second, because the United States had furnished counsel for Roberson with the motor numbers of the automobiles involved. 237 F. 2d 536, 538. After the mandate of this Court went down and on March 1, 1957, about four weeks before the second trial, the appellant filed an amended motion for a bill of particulars seeking more descriptive identification of the vehicles involved than was set forth in the indictment. The motion was denied and in its order denying the motion the district court held that the furnishing of the motor numbers was sufficient and that the identification of the cars was amply established in the evidence at the former trial, of which a transcript was available to appellant. The purpose of a bill of particulars is to enable a defendant to prepare for trial and to bar subsequent prosecution. **Norris v. United States**, 5th Cir., 1946, 152 F. 2d 808, cert. den. 328 U. S. 850, 66 S. Ct. 1118, 90 L. Ed. 1123. The granting or denial of a bill of particulars rests in the sound discretion of the trial court, and in the absence of abuse of discretion or prejudice, its ruling will not be disturbed. **Wong Tai v. United States**, 273 U. S. 77, 47 S. Ct. 300, 71 L. Ed. 545; **Reynolds v. United States**, 5th Cir., 1955, 225 F. 2d 123, cert. den. 350 U. S. 914, 76 S. Ct. 197, 100 L. Ed. 801, reh. den. 350 U. S. 929, 76 S. Ct. 301, 100 L. Ed. 812; **Johnson v. United States**, 5th Cir., 1953, 207 F. 2d 314, cert. den. 317 U. S. 938, 74 S. Ct. 632, 98 L. Ed. 1087. Roberson was not surprised. He knew the description of the cars he was charged with receiving and the car he was accused of selling. He was

not in a..y way prejudiced by the trial court's order and its discretion was not abused.

One of the jurors was a friend of some years standing of the United States Attorney prosecuting in the trial. The friendship, though long enduring, was not close nor intimate and their contacts in recent years had been infrequent and casual. It was known to counsel for the appellant, prior to the time the jury was accepted, that the juror and the prosecutor were acquainted but the extent and duration of their acquaintance was not known to him nor was it developed on voir dire. During a recess of the court, the juror and the United States Attorney met in the rest room. The juror asked the prosecutor if the jury could go home that night if the case was not finished. The prosecutor said they could, and went on to say that although he could answer such a question as was asked, he could not discuss the case. The trial court declined to declare a mistrial or grant a new trial and this refusal is assigned as error. A juror is not per se disqualified because he is acquainted with or a friend of counsel in a case, whether advocating the cause of a private litigant or prosecuting in a criminal trial. See 31 Am. Jur. 658 et seq., Jury, § 133. No prejudice of the juror was shown at or before the jury was sworn or at any time thereafter. The conversation between the district attorney and the juror was casual, it was in no way related to the issues of the case, no prejudice was shown and it was explained to the trial court. Its discretion was not abused in declining to grant a mistrial and in refusing to grant a new trial.

The appellant took the stand on his own behalf. While being cross-examined by Government counsel, he was asked, "Now, in 1941, on the 28th day of April, were you convicted of distilling and did you receive a sentence of three years?" Objection was made and sustained and the jury was instructed to not consider it. A motion for a

mistrial was made and overruled. Later, Government counsel started a question with, "Now, I will ask you this question: On April 28, 1941, were you convicted of—" when he was interrupted by the court. The question was never completed. The court thought that counsel had not gone far enough with the question to require an instruction that it be disregarded. In support of his claim of prejudicial error, the appellant cites Alabama cases holding that a witness cannot be impeached by showing the conviction of a crime which does not involve moral turpitude and that violating prohibition laws is not an offense that does involve moral turpitude. Under the law of Alabama illegal manufacture of intoxicating liquor is punished by a penitentiary sentence of from one to five years. 29 Ala. Code 1940, § 103. In Alabama an offense that may be punished by imprisonment in the penitentiary is a felony. 1 Ala. Code 1940, § 7. Under the Federal law any offense punishable by imprisonment for more than a year is a felony. 18 U. S. C. A., § 1 (1). The Alabama rule upon which the appellant relies is not applicable. In a recent opinion this court said:

> "Congress has not given the states the power of prescribing the rules of evidence in trials for offenses against the United States. In criminal cases in the federal courts, the admissibility of evidence and the competency and the privileges of witnesses are governed, except when an act of Congress or the Federal Rules of Criminal Procedure otherwise provide, by the principles of the common law as interpreted by the courts of the United States in the light of reason and experience. Rule 26, Federal Rules of Criminal Procedure; On Lee v. United States, 343 U. S. 747, 754, 755, 72 S. Ct. 967; McNabb v. United States, 318 U. S. 332, 341, 63 S. Ct. 608, 87 L. Ed. 819; Olmstead v. United States, 277 U. S. 438, 468, 469, 48 S. Ct. 564, 72 L. Ed. 944." **Pollock v. United States,** 5th Cir. 1953, 202 F. 2d 281, 285.

See Holtzoff, Reform of Federal Criminal Procedure, 3 F. R. D. 445, 452, et seq. For the purpose of discrediting a witness in a Federal criminal trial it is not improper to show that the witness, including a defendant who has elected to testify, has been convicted of a felony or of a misdemeanor involving moral turpitude. See **Pearson v. United States**, 6th Cir. 1951, 192 F. 2d 681, 699. Cf. **Steele v. United States**, 5th Cir. 1957, 243 F. 2d 712. There was, it seems, some question before the adoption of the Twenty-first Amendment as to whether violations of the prohibition acts involved moral turpitude. See annotations 40 A. L. R. 1049, 71 A. L. R. 219. Since repeal, conducting a business of making, transporting or selling shine and defrauding the Government of taxes is a Federal offense involving moral turpitude. **Jordan v. De George**, 341 U. S. 223, 71 S. Ct. 703, 95 L. Ed. 886, reh. den. 341 U. S. 956, 71 S. Ct. 1001, 95 L. Ed. 1377. The unanswered question did not say whether the query contemplated a Federal or State offense. If the latter it might be one which did not involve moral turpitude, but in any event it would have been a felony. There was no error in the question. There would have been no error had the appellant been required to answer it. The appellant has received a better break than that to which he was entitled.

Among the grounds for a new trial, rejected by the trial court, the appellant urged that the district judge was disqualified and this was unknown to appellant during the trial. One of the witnesses for the Government, Hollis Bryant, had been convicted in the Northern District of Alabama of some offense involving the interstate transportation of stolen motor vehicles, and the district judge who presided at the trial of the case before us was the United States Attorney who prosecuted Bryant in the Northern District of Alabama. This is the asserted basis for disqualification. A judge should disqualify himself in any case where he has been of counsel. 28 U. S. C. A.,

§ 455. A United States attorney is of counsel for the Government in criminal prosecutions. **United States v. Vasilick,** 3rd Cir. 1947, 160 F. 2d 631; **United States v. Maher,** D. C. Me. 1950, 88 F. Supp. 1007. The case before us was not against Bryant so it does not appear that the letter of the statute would be applicable. But if the cars involved in the trial over which the former United States attorney presided as district judge were the same as those involved in the investigation made and prosecution conducted by him as counsel for the Government, there might have been presented a situation under which the judge should have disqualified himself. A prior knowledge of the facts or a prior interest in an issue arising out of them may be a ground for disqualification. It is not shown that the cars were the same in this case as in the case against Bryant. The contrary is asserted and the statement of the trial judge that the ground is frivolous seems to bear out the assertion. Certainly the record does not disclose nor does the appellant show any prejudice. The ground is without merit.

One of the Government witnesses, Hayden McBrayer, had formerly been a partner in the operation of a used car business. He testified as to some transactions of or with the appellant and Bryant. Portions of his testimony related to the vehicles involved in the case. On cross-examination the witness was asked by counsel for the appellant, "Did you leave Montgomery with the floor planned automobiles that Mr. Barnett had floor plans on?" The court interrupted and declined to permit the witness to answer. Counsel then urged that the question was for impeachment. The court held the question sought to bring in immaterial matter which was not pertinent to the case. Counsel for the appellant now urges that the purpose of the inquiry was to show that the witness and his partner were not fine business men with excellent credit. If the question was intended to elicit testimony for

impeachment it was improper. Although, as has been said, the conviction of a witness of a felony can be shown to impeach his credibility, it does not follow that an attempt may be made to impeach a witness by showing wrongful conduct or the commission of an offense for which there has been no conviction. **Lennon v. U. S.**, 8th Cir. 1927, 20 F. 2d 490; **Echert v. United States**, 8th Cir. 1951, 188 F. 2d 336, 26 A. L. R. 2d 752. If the question was asked to show the financial condition of the firm of which the witness was member no error was committed in declining to allow it. The question was collateral to the purpose for which appellant's counsel says it was asked and quite remote from the issue of the guilt of the appellant of the offense with which he was charged. The scope of cross-examination and the limits upon it must of necessity be committed to the discretion of the trial court and in the absence of abuse that discretion will not be interfered with. See **Alderman v. United States**, 5th Cir. 1929, 31 F. 2d 499. This is particularly true as to collateral or irrelevant matters. **Marteney v. United States**, 10th Cir. 1954, 218 F. 2d 258, cert. den. 348 U. S. 953, 75 S. Ct. 442, 99 L. Ed. 745; **Dolan v. United States**, 8th Cir. 1955, 218 F. 2d 454; 3 Wharton's Crim. Evid. 12th Ed. 258, § 867.

In terminating the colloquy with counsel with respect to the cross-examination of the witness McBrayer, the court said, "I told you I would not allow you to go into that, it is not pertinent in my judgment. I don't want to hear any more examination on it during the course of this trial for the Government or the defendant." This statement, appellant urges, was a reprimand of his counsel, and so bolstered the Government's witnesses as to assure the conviction of the defendant from that point. We do not think the observation of the court permits the inference which appellant would have us draw from it. We find nothing prejudicial to the defendant in the statement.

The witness Hollis Bryant, replying to a question of the district attorney, answered that he did not recall. The district attorney was permitted to ask leading questions for the purpose of refreshing the recollection of the witness. These questions were with respect to statements made by him to the appellant or by the appellant to him and were based on a transcript of the testimony of the witness at the previous trial. There were three such questions. In response to two of them the witness said he did not recall and in answering the other he said he could have made the statement about which he was asked. Nothing was drawn from the lips of the witness by these questions which would have resulted in prejudice to the defendant if error had been committed. But we see no impropriety in the court's action. The trial court may in its discretion, permit leading questions to refresh the recollection of a witness. The manner of exercise of this discretion will not be ground for reversal unless the discretion be abused. 3 Wharton's Crim. Evid. 222, § 847. Prior testimony may, in the discretion of the trial court, be used for the purpose of refreshing the recollection of witnesses. **United States v. Socony-Vacuum Oil Co.**, 310 U. S. 150, 60 S. Ct. 811, 84 L. Ed. 1129; Wigmore on Evidence, Vol. III, pp. 105 et seq., § 761.

The court charged the jury that "possession of a stolen automobile, may, under proper circumstances be sufficient for you to draw on inference of guilty knowledge on the part of the defendant that the automobile, or automobiles, were stolen". The appellant did not except to the charge. He did not request any instruction defining "possession". He now urges that the failure of the trial court to include in its charge a definition of "possession" is a plain error or defect affecting the appellant's substantial rights which this Court should notice under Rule 52 (b), Fed. Rules Crim. Proc., 18 U. S. C. A., although not brought to the attention of the trial court. In support of this contention

we are cited **Barfield v. United States**, 5th Cir. 1956, 229 F. 2d 936, as controlling authority. A judicial opinion, as a precedent, is to be read and applied in the light of the facts of the case in which the opinion was written. Among the recent cases stating this doctrine are **White v. Aronson**, 302 U. S. 16, 58 S. Ct. 95, 82 L. Ed. 20; and **Armour & Co. v. Wantock**, 323 U. S. 126, 65 S. Ct. 165, 89 L. Ed. 118. In the Barfield case the appellant claimed to be a hitchhiker. He was driving a stolen car which was involved in a wreck. He claimed he was picked up by a person, pointed out by him at the scene of the wreck, who was believed by him, so he said, to be the owner of the car. In the Barfield case, as the opinion there shows, in the setting which that case portrayed and under the circumstances of that record, a definition of possession should have been given to the jury in connection with the charge, in substance, that possession of recently stolen property raises a presumption of guilty knowledge. Such a factual situation is not here portrayed nor do the circumstances of this record call for the application of the rule there adopted. There was ample evidence in this case which, if believed as the verdict shows it was, sustains the conclusion that the appellant had the custody and control of the cars in question. Custody and control are the commonly accepted and generally understood incidents of possession. No peculiar condition requiring that "possession" be defined was here present.

The appellant takes exception to the refusal of the trial court to give the jury the charges requested by him. The court refused to give the charges because they were covered by the oral charge or did not state correct propositions of law, and on the further ground that copies were not furnished to the district attorney as required by Rule 30, Fed. Rules Crim. Proc., 18 U. S. C. A. The appellant seeks to excuse compliance with the rule by saying that the tendered instructions were the same as those offered

at the former trial and hence no need existed for submitting them again. Because, appellant argues, he was denied a bill of particulars on the ground, among others, that the cars involved were the same as in the former trial, so should there be no necessity of furnishing other counsel with requested instructions since they were the same as before. This argument, though plausible in sound becomes fallacious upon examination. The identity of the cars was of necessity the same in both trials. The identity of the offered instructions was not necessarily the same and the district attorney should not be expected to assume that they would be nor to search for copies of them. In any event we have examined the tendered instructions and agree with the trial court that they are incorrect, inapplicable or adequately covered by the instructions given.

Errors are assigned by reason of the trial court's refusal to direct an acquittal, to grant a motion in arrest of judgment and in overruling a motion for new trial. These are based upon the other assignments of error which we have discussed or upon the sufficiency of the evidence. We have examined the record. As on the former appeal and for the same reasons as in the former opinion, 237 F. 2d 536, 538, we hold that the motion for judgment of acquittal was properly denied. So also as to the motion in arrest of judgment and the motion for a new trial. Extension of this opinion for a discussion of the evidence would serve no useful purpose. The judgment of the district court is

Affirmed.

A true copy.

Attest:

Edward W. Wadsworth,
Clerk, U. S. Court of Appeals, Fifth Circuit, New Orleans, Louisiana.

(Seal)

APPENDIX "B."

Judgment.

Extract From the Minutes of November 22, 1957.

Herman Roberson

No. 16626. versus

United States of America.

This cause came on to be heard on the transcript of the record from the United States District Court for the Middle District of Alabama, and was argued by counsel;

On consideration whereof, It is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be, and the same is hereby, affirmed.

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No. 795

In the Supreme Court of the United States

OCTOBER TERM, 1957

HERMAN ROBERSON, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

J. LEE RANKIN,
Solicitor General,
MALCOLM ANDERSON,
Assistant Attorney General,
BEATRICE ROSENBERG,
MARSHALL TAMOR GOLDING,
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Department of Justice, Washington 25, D. C.

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458214—58

In the Supreme Court of the United States

OCTOBER TERM, 1957

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UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the Court of Appeals is reported at 249 F. 2d 737.

JURISDICTION

The judgment of the Court of Appeals was entered on November 22, 1957. A petition for rehearing and motion to supplement the record was denied on January 25, 1958. The petition for a writ of certiorari was filed on February 19, 1958. The jurisdiction of this Court is invoked under 28 U. S. C. 1254 (1).

QUESTIONS PRESENTED

1. Whether a new trial should have been granted on petitioner's showing, after trial, that the presiding

judge had been United States Attorney in another district when the principal Government witness pleaded guilty to the interstate transportation of a stolen automobile not alleged to be among those involved in the charges against petitioner.

2. Whether the Court of Appeals should have required the Government's confidential file pertaining to the witness to be added to the record in order to pass on the issue of disqualification.

3. Whether petitioner should have been permitted to cross-examine a Government witness concerning alleged past acts of misconduct, for which the witness had been neither indicted nor convicted, when such alleged acts were not related to charges against petitioner.

4. Whether a mistrial should have been declared because petitioner, testifying as a witness in his own behalf, was asked whether or not he had been convicted of "distilling," when the trial judge sustained an objection to the question (which was never answered) and instructed the jury to disregard the question.

STATUTE AND RULE INVOLVED

28 U. S. C., Section 455 provides:

> Any justice or judge of the United States shall disqualify himself in any case in which he has a substantial interest, has been of counsel, is or has been a material witness, or is so related to or connected with any party or his attorney as to render it improper, in his opinion, for him to sit on the trial, appeal, or other proceeding therein.

Rule 26, F. R. Crim. P.:

> In all trials the testimony of witnesses shall be taken orally in open court, unless otherwise provided by an act of Congress or by these rules. The admissibility of evidence and the competency and privileges of witnesses shall be governed, except when an act of Congress or these rules otherwise provide, by the principles of the common law as they may be interpreted by the courts of the United States in the light of reason and experience.

STATEMENT

In the United States District Court for the Middle District of Alabama, petitioner was convicted on counts 1, 4, and 5 of an indictment charging the receipt and sale of stolen motor vehicles moving in interstate commerce and known to have been stolen. Count 1 charged petitioner alone with having received in March 1953 a stolen 1948 Chevrolet. Counts 4, and 5, against petitioner and one Bill Rhodes, charged the receipt and sale of a 1951 Cadillac in June 1953 (R. 2–3, 325). Petitioner was sentenced generally to imprisonment for four years (R. 336). On appeal, the conviction was unanimously affirmed by the Fifth Circuit (Pet. 19–29).[1]

At the trial, the Government proved its case through the testimony of one Hollis Bryant that he had stolen the automobiles in question, transported them interstate, and sold them to petitioner (R. 49–75). Bryant's testimony was corroborated by Mrs.

[1] A prior conviction on essentially the same charges had been reversed for errors in the questioning of petitioner's character witnesses as to petitioner's prior convictions for transporting liquor. 237 F. 2d 536.

Vernita Philyaw, who was with Bryant when the automobiles were stolen and resold (R. 111–123). The owners of the automobiles testified that the cars were stolen, two of them implicating Bryant in the theft (R. 31–35, 44–49). Bryant sold each of the cars, including the Cadillac, for from $300 to $350 (R. 55–56, 59–60, 66). For the Cadillac, petitioner agreed to give him, as an additional $700, registrations for other automobiles at the rate of $25 a registration (R. 70). An automobile salesman testified as an expert that the wholesale market value of the automobiles at the time of their purchase from Bryant by petitioner was considerably higher than the price petitioner paid (R. 107–110). The purchasers of the Cadillac and Chevrolet testified to buying the cars from petitioner's used car lot (R. 98–103, 128–137).

Petitioner's defense was that the Chevrolet was in reality purchased by Jack Hamel and Hayden McBrayer, who operated an independent used car dealership on his lot, and that his only part in the transaction was to lend them the money to make the purchases (R. 195–199). He further alleged that the Cadillac was in reality purchased by his brother-in-law, Bill Rhodes, with money lent by petitioner's wife, and that he arranged for the resale of the Cadillac by Rhodes merely as a service (R. 155–156, 181, 199–201). Hamel and McBrayer denied his allegations (R. 228-234, 252–258).

As part of his defense, petitioner attempted to show that Hamel and McBrayer had poor reputations in the community for truth and veracity (R. 275–288), and that McBrayer had absconded with floor-planned auto-

mobiles belonging to the McBrayer-Hamel firm shortly after the sales involved in this case. He first asked Hamel on cross-examination if this were not the fact, and Hamel denied it (R. 243). Then, after McBrayer denied to the United States Attorney on direct examination that he had absconded with any money or papers belonging to the firm (R. 258), petitioner attempted to question him on cross-examination concerning the floor-planned automobiles. The court on its own motion disallowed the question, stated that McBrayer was not on trial and the question was neither material nor pertinent to the case, and that neither the Government nor petitioner were to attempt any further examination on this point (R. 258, 259).

Other pertinent facts are set forth below in connection with certain contentions made by petitioner.

ARGUMENT

1. On April 18, 1957, after conviction and sentence, petitioner moved for a new trial, arguing *inter alia* that the trial judge should have recused himself because he was United States Attorney for the Northern District of Alabama when the case against Hollis Bryant was under investigation by that office and when Bryant was sentenced in that district. Petitioner alleged that this fact was not known to him until after the trial had been completed (R. 338–340). The court dismissed the contention as frivolous (R. 346). In affirming the conviction, the Court of Appeals pointed out that there was no showing that the cars involved in petitioner's trial were those involved in the charge against Bryant so that, not only was

there no violation of 28 U. S. C. 455 (*supra*, p. 2), but there was no showing of any prior knowledge or interest which might be ground for disqualification (Pet. App. 23–24).

The presiding judge was clearly not disqualified under 28 U. S. C. 455. Only two of the four grounds set forth in the section could possibly be applicable to this case: that Judge Johnson had "been of counsel," or that he "is so related to or connected with any party or his attorney as to render it improper, in his opinion, for him to sit on the trial." Judge Johnson was never "of counsel" in any case involving petitioner. Rather, he was of counsel in a case against Hollis Bryant. Petitioner's reliance on *United States* v. *Vasilick*, 160 F. 2d 631 (C. A. 3), and *United States* v. *Maher*, 88 F. Supp. 1007 (D. Me.), is thus misplaced. Each of these cases involved a judge called upon to rule upon a motion to vacate attacking a conviction obtained when the judge was United States Attorney. The ruling in each case was that the United States Attorney was "of counsel" in the case even though his personal participation was limited to signing the indictment. But here the judge was not even technically of counsel in a case against petitioner. There is thus even less basis for recusation here than there was in *Rose* v. *United States*, 295 Fed. 687 (C. A. 4), in which an indictment which was never tried was signed by a United States Attorney who later was appointed judge in the same district. It was held that he was not required to disqualify himself from presiding over the trial of a later indictment

brought against the same defendant and covering some of the same transactions. In other words, together the cases hold that while a judge must recuse himself if he had a direct, even though merely formal, connection with a case before him, the judge need not recuse himself if he has merely had a connection with a collateral case.

Petitioner claims that Judge Johnson had "prior knowledge," and this alone is enough to have required his recusation. No showing of prior knowledge is made. There was no proof that the charge against Bryant related to cars involved in petitioner's trial, a fact which, if true, could have been shown from the official records in Bryant's case. It can hardly be presumed that the judge must have heard about petitioner because, while he was United States Attorney in another district, his office investigated a thief who later sold other cars to petitioner. And even assuming some knowledge, this would not amount to an interest in the case or connection with a party under 28 U. S. C. 455. Moreover, even where this is such a connection, the statute does not require recusation but leaves it to the judge to determine whether "in his opinion" it would not be proper for him to sit.

As for any question of propriety beyond the strict terms of the statute, this even more clearly was for the judge to decide. It is evident from the judge's characterization of petitioner's claim as frivolous that the judge did not in fact have any prior knowledge of petitioner which would lead him to believe that he should recuse himself.

2. In his petition for rehearing in the Court of Appeals, in an effort to establish prior knowledge by the judge, which petitioner assumes (erroneously as shown above) would have required recusation,[2] petitioner moved to have the entire confidential investigative file used by the United States Attorney's office in the Northern District of Alabama in regard to Bryant added to the record of this case for inspection by the Court of Appeals. The petition for rehearing was denied without opinion. Petitioner (Pet. 8–10) seeks review of that action.

No doubt the Court of Appeals has authority to supplement a record if there has been omitted from it matter which is deemed necessary or appropriate, as the court below ruled in a very different context in *Phillips Petroleum Corporation* v. *Williams*, 159 F. 2d 1011.[3] Here, even assuming *arguendo* that petitioner's motion

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[2] No claim is made that the file is necessary to show that the charge against Bryant related to a car involved in petitioner's case. That information could be obtained from the official court records of the United States District Court for the Northern District of Alabama. These records, including Bryant's indictment, which identifies by year, make, and motor number the automobile he was charged with transporting, would disclose that the automobile was not identical with any of the automobiles involved in this case.

[3] That case involved a petition to retax costs, and held that the printed record should be abbreviated whenever and wherever possible. In laying down this holding, the court undertook to lay at rest the fears of litigants that they might leave something out of the record which would later turn out to be vital, by saying at page 1012 that it had "ample authority * * * to supplement the record if there has been omitted from it matter which is deemed necessary or appropriate in the decision of the case."

to supplement the record (not made until the petition for rehearing in the Court of Appeals) was timely, the file was neither necessary nor appropriate. Even if petitioner were mentioned therein, this would not prove that Judge Johnson, rather than some assistant, had read the files, and it would certainly not show that Judge Johnson had any memory of the facts when petitioner's case came before him. See *Rose* v. *United States*, 295 Fed. 687, 688, *supra*. And as discussed above, prior knowledge would not in any event *per se* require recusation.

Petitioner calls upon *Jencks* v. *United States*, 353 U. S. 657, in support of his contention, claiming (Pet. 9) that *Jencks* holds that "an accused is entitled to have government files made a part of the record when such files contain evidence material to his case." But he has badly misread that decision, which dealt entirely with the right of a defendant to inspect, for impeachment purposes, the prior statements of witnesses who testify against him during trial. This Court specifically excluded inspection which was not a demand for "specific documents" or which "propose(d) any broad or blind fishing expedition among documents possessed by the Government on the chance that something * * * might turn up." 353 U. S. 657, 666, 667.

3. Petitioner claims that he was prejudiced in not being permitted to ask McBrayer on cross-examination whether he had left Montgomery with floor-planned, or mortgaged, automobiles (R. 258, 259). This alleged occurrence, which had been denied by

Hamel and by McBrayer himself on direct examination, was after the events involved in petitioner's trial and had nothing to do with the cars involved in the charges against petitioner. It was therefore well within the discretion of the trial judge to bar further questioning with respect thereto.

The rule is that a witness may be impeached only by showing conviction for a felony, and not by showing wrongful conduct or the commission of an offense for which there has been no conviction. *Lennon* v. *United States*, 20 F. 2d 490 (C. A. 8), and cases cited at page 494; *Echert* v. *United States*, 188 F. 2d 336 (C. A. 8). Indeed, petitioner relies on this very rule in connection with an issue he raises as to his own cross-examination (Pet. 14–17).

There are cases which hold that a witness may be cross-examined on matters which have a direct and material bearing on the motivation of a witness to give perjurious testimony concerning the matters at issue in the case. Such is *Tla-koo-yel-lee* v. *United States*, 167 U. S. 274, on which petitioner principally relies. That case involved the alleged murder of a white man by two Indians in the presence of two other Indians, the only purported eye-witnesses, one of whom was the wife of one of the accused. Defendant sought unsuccessfully to ask this woman whether she had agreed with the other witness that she would live with him if her husband was convicted, and whether she was in fact then living with him. The excluded questions had a direct and material bearing on her credibility, as her answer might disclose that she stood

to gain by giving untruthful testimony. See also *Weisflog* v. *United States*, 291 Fed. 339 (C. A. 8).[4]

These decisions are not in point here. McBrayer was not questioned concerning the automobiles involved in this case, but about other automobiles. There is no apparent way that he could have covered up his own misdeeds by giving perjurious testimony against petitioner. And showing that he committed another type of offense would not show that he, rather than petitioner, comitted the offense charged in this case. Hence the struck question was collateral and had no direct bearing on the issue at bar. Compare *United States* v. *Stochr*, 196 F. 2d 276 (C. A. 3), certiorari denied, 344 U. S. 826.[5]

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[4] There, the defendant was charged with stealing cattle, owned by the complaining witness but mortgaged. He claimed the owner sold the mortgaged cattle to him which would have been a crime on the owner's part. He sought to ask the complaining witness concerning other alleged sales of the mortgaged cattle. Since the answer might have substantiated the defense by showing a general course of illegal conduct, and hence the witness' motivation to cover up this conduct by bringing the complaint, the questions were held proper. *Pullman Company* v. *Hall*, 55 F. 2d 139 (C. A. 4), cited by petitioner (Pet. 11), was a civil case where defendant sought to question plaintiff concerning her alleged false swearing on a petition in forma pauperis, which the Court described at p. 141 as "matter connected with the very case on trial." *District of Columbia* v. *Chessin*, 61 F. 2d 523 (C. A. D. C.), another civil case, merely held that testimony may be offered by one party to contradict testimony given by another party. *Pittman* v. *United States*, 42 F. 2d 793 (C. A. 8), found erroneous a charge to the jury that it could not consider the admission by a Government agent that he used a false name to obtain evidence.

[5] In *Stochr*, the defendant, in an income tax evasion case, was not permitted to ask his former office manager, who testified that he had prepared false profit and loss statements for de-

4. When petitioner took the stand on his own behalf, the United States Attorney asked if on a specified date he had been convicted of distilling and received a three-year sentence. Petitioner objected and asked that the jury be instructed to disregard the question. The objection was sustained and the requested instruction given (R. 225–226). Petitioner also asked for a mistrial, but this was denied. On re-cross, the United States Attorney said: "On April 28, 1941 were you convicted of"—at this point, the judge cut him off. On petitioner's request that the jury be instructed to disregard the question, the judge said that he did not think he had allowed the United States Attorney to go far enough to justify an instruction (R. 227).

The court below held that, since evidence of a prior conviction for distilling would have been admissible for impeachment purposes, "[t]he appellant has received a better break than that to which he was entitled" (Pet. App. 21–23). The ruling of the court below was correct. A witness may be impeached in a federal court by showing prior conviction of a felony. Whether Alabama would have permitted impeachment by the showing of the same conviction is immaterial. Federal courts are not bound by state law in determining the rules of evidence, *United States* v. *Reid*, 12 How.

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fendant at defendant's direction, whether he had prepared such false statements for his former employer without the knowledge of that employer. The court held that whether he had done so or where he had learned to prepare such false statements was immaterial in regard to the question of whether he had prepared such false statements for defendant at defendant's direction.

361, or the competence of witnesses, *Wolfle* v. *United States,* 291 U. S. 7. In this case, the questions were not answered and the jury were instructed to disregard the one question which conveyed any information. It is presumed that a jury will follow instructions. *Delli Paoli* v. *United States,* 352 U. S. 232, 242. In the circumstances here, certainly the judge did not abuse his discretion in refusing to grant a mistrial. *Stahl* v. *United States,* 144 F. 2d 909 (C. A. 8).

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari should be denied.

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